THE LIBERTARIAN REVIEW

July 1980
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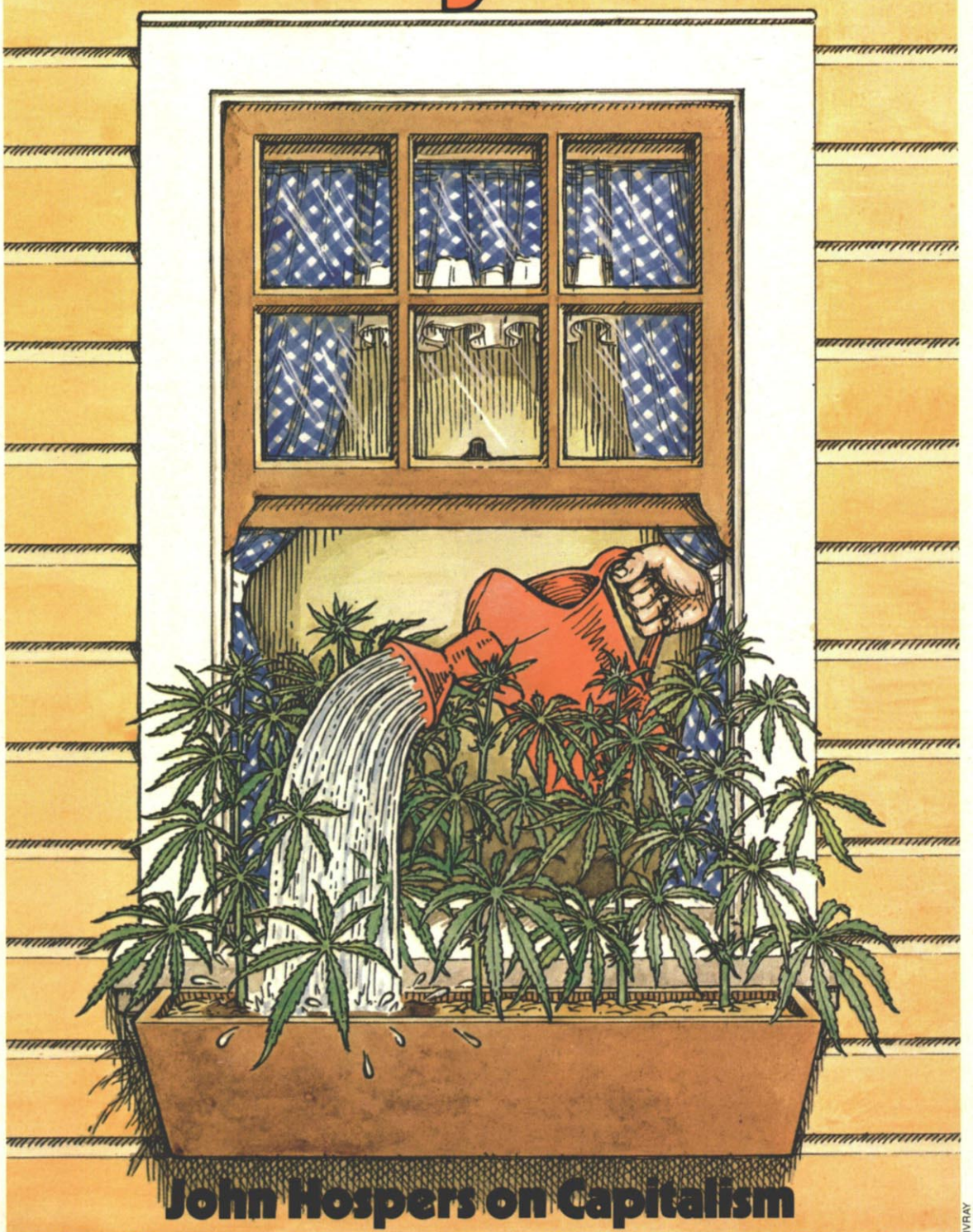
LIBERTARIAN

Freedom is the Issue

Marijuana



John Hospers on Capitalism

BRUCE McGILLIVRAY

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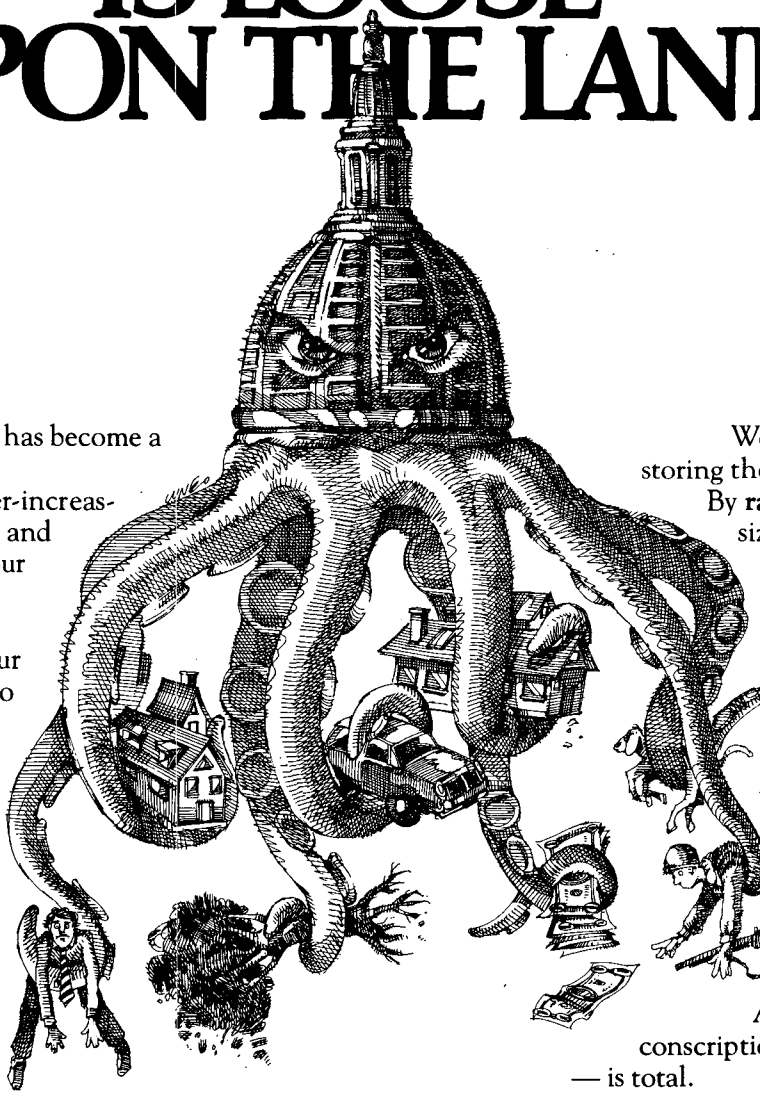
A MONSTER IS LOOSE UPON THE LAND.



Our government has become a monster.

Its policies of ever-increasing taxation, regulation, and inflation have crippled our economy and given us ten-cent dollars.

Every aspect of our personal lives is subject to its constant scrutiny and intervention; the new Omnibus Crime Bill (S 1722), now pending in Congress, would make its police-state powers all but complete.

Its constant interventions in the affairs of peoples around the world have earned us massive ill-will and magnified the risk of war. And now, once again, there is talk of conscripting young Americans to fight and die in foreign lands.

Responsibility for these conditions lies with the politicians — Republican and Democrat alike — who have controlled our destiny for too long.

But now, there's a new party.

The Libertarian Party.

We're dedicated to restoring the American Dream. By **radically reducing** the size and power of government, and setting people free to live as they choose, so long as they respect the same right of others.

We stand uncompromisingly for civil liberties, a free-market economy, and a non-interventionist foreign policy. And our opposition to conscription — for any purpose — is total.

If that sounds like what you've been looking for, we invite you to join the hundreds of candidates and thousands of individual members who are working to build a real alternative in American politics.

The Libertarian Party. 2300 Wisconsin Avenue, NW. Washington, DC 20007.

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THE LIBERTARIAN REVIEW

July 1980
Volume 9, No.7

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Freedom is the issue

by Jeff Riggenbach

In the most comprehensive article on marijuana—its history, its effects, and its political and economic importance—ever published in any magazine we know of, *LR*'s executive editor explains why pot may be the perfect libertarian issue in this election year.

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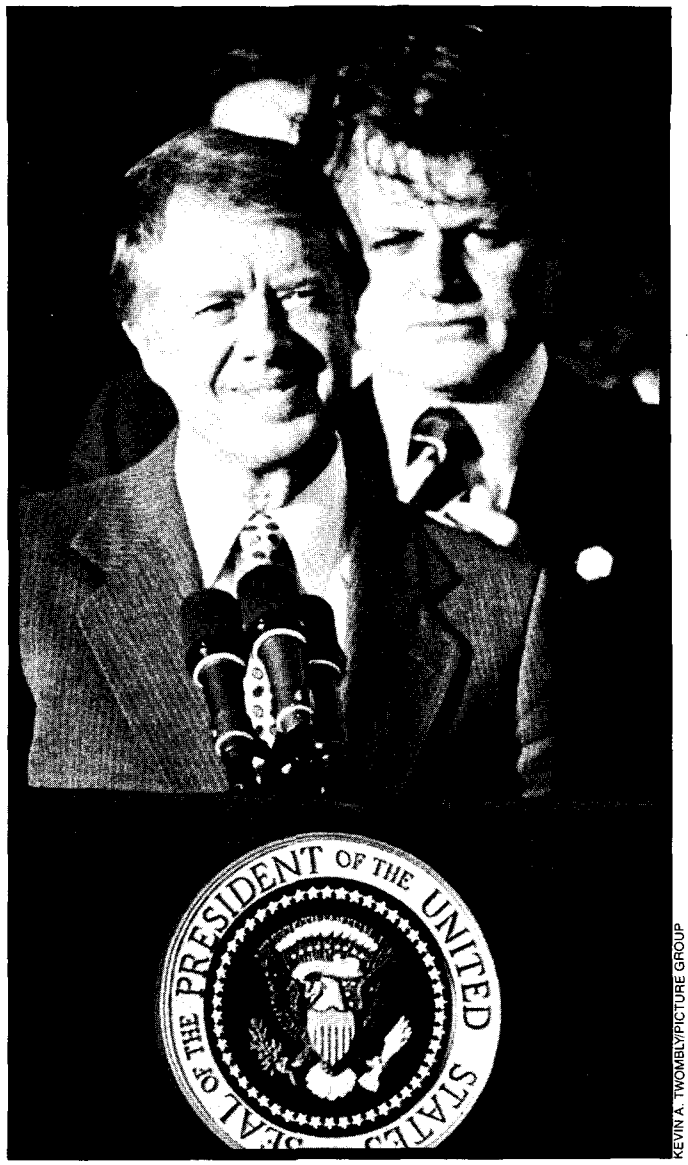
EDITORIALS

The debates

AS THE PRIMARY SEASON comes to a close, it seems certain that Ronald Reagan and Jimmy Carter have their parties' nominations sewed up. The eight competitors who began the race in earnest have all bit the dust. One of them, John B. Anderson, made the leap over the Republican fence into the Independent camp, but the others — Kennedy, Brown, Crane, Connally, Baker, Bush, and Dole—have simply faded from the scene, though Ted Kennedy seems still determined to hang on by his fingertips until the convention is over.

Why was the campaign so quick and decisive as far as these other candidates were concerned? One of the major reasons was the debates—or the lack of them — in Iowa and New Hampshire. Televised nationally, the debates enabled the American people to see the candidates perform face to face, and that made it possible to make some early choices.

The debates *made* John Anderson, a candidate whom no one knew seven months ago. And just as certainly, the absence of debates among the Democrats *unmade* Jerry Brown, whose space-age campaign seems in retrospect like a rehearsal for the attempt to rescue the hostages in Iran. Had Brown got a chance to square off against Kennedy and Carter, *he* might have been this year's John Anderson. But he didn't, and even though more new ideas poured forth from his campaign than from any other except that of Ed Clark and the Libertarians, the American people never got a chance to hear him out, or to contrast him directly with his Democratic opponents. Certainly one thing is true: standing next to the ranting Kennedy and above all the bumbling, lackluster Carter, Brown would have loomed as a veritable statesman, and his "flake" image would probably have soon faded.



KEVIN A. TWOMBLY/PICTURE GROUP

Ted Kennedy, who shows little of his brothers' wit and charm, might not have been helped by a debate with President Carter.

Kennedy's doom was sealed in part by the absence of Democratic debates, but even more was it sealed by the fact that once he declared, the American people began to listen to him—and found that the inarticulate Kennedy had nothing whatever to say, at least until a few of his brothers' speechwriters began recycling 1960s liberalism. And then there was the inevitable contrast with John and Bobby, both of whom had had something approaching charm and wit. Teddy, with his bellicose pounding of podiums and his shouting at his audiences, paled by comparison. The beacon of Camelot had become a searchlight blinding one's eyes.

On the Republican side, the debates cleared away the fuzz, and the candidates stood on their own. Reagan was hurt by his refusal to debate in Iowa, and quickly did an about-face in New Hampshire, which helped him to recover lost momentum. As for the others, this is what the electorate saw:

Robert Dole, the vice presidential candidate who, many claim, helped to sink Gerald Ford's 1976 candidacy, came off as a genuinely witty and charming man, but with no real stature,

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THE WASHINGTON POST

Presidential candidates John Anderson and Ed Clark speak to Robert Pierpoint (center), President of the White House Correspondents' Association, at its dinner last May.

nothing to set him off favorably against Reagan, with whom he differed seldom, if ever. "If you're looking for a younger Ronald Reagan," he said, "here I am." But the voters weren't, and Dole quickly faded.

Philip Crane, darling of the New Right, also had nothing to offer except that he, too, was a younger version of Reagan. He was plain-spoken and blunt in his attacks on big goverment (except for the Pentagon, which looks emaciated to him), and came across as, well, a potentially good Senator. But a *President?* Thanks, but no thanks, the voters seemed to say. Crane's constituency defected to the Reagan camp.

John Connally, the disciple of both Lyndon Johnson and Richard Nixon, spent $11 million and collected one delegate. He came across as a conservative, southern version of Teddy Kennedy, and faded accordingly. He had nothing going for him against Reagan, and as international tensions and threats of war mounted, he lost his ace card — that he would be a "strong leader." The American people didn't want a swaggering, barroom brawler in the White House in the middle of so many international tensions. Subdued and lacking the old fire in the debates, Connally couldn't compete.

Howard Baker came across as a nice guy, but something strange happened: as one focused more sharply on his television image, he seemed to become more and more grey; no amount of fiddling with the TV controls produced anything other than a sense of fading contrast, a fuzziness, a blurred image, a man of some amount of apparent decency who stood for — well, *something,* one hoped.

George Bush conveyed a sense of urgency with nothing particularly urgent to be concerned about. The quintessential eastern establishment Ivy League candidate was also hurt badly by his early and surprising win in Iowa—after that he had nowhere to go but down. And his arrogance in excluding other Republicans from one debate in New Hampshire reinforced his image as an elitist, and sealed his doom.

John Anderson, on the other hand, stood out. Here he was in Iowa, in farm country, backing the President's grain embargo, while the other "tough" Republicans hemmed and hawed and prattled on and on about its sinister nature. And then he popped up in New Hampshire, supporting gun controls before an audience of gun nuts. It seemed like political suicide — but Anderson was shrewdly playing to a larger, more distant gallery. To most Americans, this school marm brandishing a switch seemed to be singing a different, even principled, tune. He seemed to be outside the ordinary categories, and his surprising showings gave both his campaign and his ego a boost; they boosted the ego, if not the campaign, nearly into outer space. Anderson has since flown the Republican coop and landed squarely in the midst of a tangle of rules, regulations and restrictions thrown at him by the Federal Election Commission he helped to create.

Reagan came off best, and the voters rewarded him with their tentative, if often uneasy, support. The age issue, which had threatened to loom large on the horizon after a bungled interview on CBS's *60 Minutes,* faded instead as Reagan showed he had the stamina to carry on. At his worst he came off at least as well as any of the other candidates, sounding tough without sounding bellicose. The format of the debates, which permitted answers of no more than a few fleeting minutes in length, worked to his advantage also, allowing him to toss off his anecdotes and epigrams, but sparing him from having to defend his narrowminded social attitudes and jingoistic foreign policy views. Reagan writes the best scripts in the land, but no one has stopped to ask the question of whether a TV script is what this country needs in this age of crisis and instability.

The debates, then, can make or break a candidate, which is why the issue of who will be involved in this fall's televised debates has become so important. Bishop Berkeley once said that to be is to be perceived. Today, to be is to be on television. Television grants a sense of reality to a campaign, a sense of legitimacy in the minds of the electorate. To wage a serious campaign, one *must* be on television.

For the Citizens Party, with its candidate Barry Commoner, and the Libertarian Party, with its candidate Ed Clark, media coverage and televised debates would seem to be the only hope of entering the national limelight. And the ruler of this year's televised debates, the League of Women Voters, is trying to make damned sure there is no such entrance. For

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Commoner, whose snarling, mean, ranting style would probably not come over very well on television, that's no big loss. In any case his candidacy seems to be doomed by the entry of John B. into the race as an independent. Both Anderson and Commoner are candidates of the New Class, with Anderson clearly the superior political figure. Even the left-wing magazine *The Progressive* admits that Commoner's race is doomed: the Citizens Party, they proclaimed in their June issue, "has everything except a constituency."

Clark is in a somewhat better position. For one thing, he will be on the ballot in more states this fall than anyone except Carter and Reagan. He'll beat Anderson by as many as twenty states. For another, the Clark campaign is already planning on running at least 60 five-minute commercials on national television, in addition to local TV spots and countless radio ads for the campaign. That will in itself lend more credence to the Clark campaign. But what about the debates? Can the League of Women Voters keep Anderson off any national debates without enraging the American people? And can they admit John Anderson without also admitting a candidate who will be on more ballots than Anderson and will be receiving wide national exposure, to wit, Ed Clark? At this point, nobody seems to know. As Steve Chapman pointed out in *The New Republic,*

> In 1976 the League restricted the presidential debates to the nominees of the two major parties, excluding independent candidate Eugene McCarthy, among others. This decision fit nicely with the preferences of the television networks, which couldn't sponsor the debates themselves without running the risk of having to include minor-party candidates. Since the League was running things, though, the networks were able to pretend that they were merely covering the debates as a "news event," a transparent ruse to circumvent the equal time rule that the Federal Communications Commission sanctioned. The decision also served the interests of the major parties, which were unalterably opposed to giving any free publicity to McCarthy. It was not the League's finest hour.

This year the League faces a similar dilemma created by the independent candidacy of John Anderson. Excluding Anderson would be much more controversial than excluding McCarthy, since polls have given Anderson as much as 24 percent of the vote in a race against Jimmy Carter and Ronald Reagan, and particularly since Anderson is bound to have a lot of supporters among League members. But admitting him would set a troublesome precedent for future debates, and might also make it hard for the League to exclude Libertarian party nominee Ed Clark, who probably will be on more state ballots than Anderson. Either decision is bound to make a lot of people angry, something the League isn't used to doing. ("America's Mother Hen," May 17)

There is one fair way out of this dilemma. If televising a three- or four-man debate is too unsettling for the League, it should consider two sets of debates: Reagan against Carter, and Anderson against Clark. After all, the debates in Iowa and New Hampshire made Anderson's campaign *only* because he began by running as a Republican; he then cashed in on the media attention by switching to Independent status. Ed Clark and the Libertarians, on the other hand, really *are* principled, and have been working to build a new and viable alternative to the two-party system for the better part of a decade, chalking up some impressive victories along the way. If the League of Women Voters is really serious about furthering an "informed electorate," then there is no better way for it to do so than by recognizing the fact that *more than half* of the American people are dissatisfied with a choice between Carter and Reagan, and giving them the alternative of hearing from Anderson and Clark. Surely this is something to which Mr. Principled Anderson could have no objection. Or are those principles and all that rhetoric about "an alternative" for the American people just so much hot air?

—Roy A. Childs, Jr.

The moral equivalent of war

WHEN THE ABORTIVE raid on Iran on April 25 to rescue the embassy hostages was revealed, many Americans wondered how the President had decided to go ahead with it. There seemed to be a Keystone Kops aura around the whole mission.

Somehow it was decided to send a military expedition into Iran, no matter what the risks to the lives of the hostages or to world peace. Then it was decided to land the expedition within sight of a highway which it was erroneously assumed was untravelled, which decision in turn required taking a busload of Iranians prisoner when they passed by on said highway. If all had gone according to "plan" the expedition was to fly by helicopter to an unidentified base near Teheran where motor vehicles would be waiting, drive to the embassy and enter it, "free the hostages," and then "escort them either to the waiting motor vehicles or to helicopters" which would ultimately take them to the waiting C-130s (waiting near that highway which could also have been used by Iranian military vehicles wishing to retaliate) and fly them and the busload of Iranian prisoners out of the country. No announcement was ever made of what was projected if the Iranian response to all this was anything other than openmouthed admiration and amazement at our expertise. When reporters pressed for details on how the hostages would have been got out of the embassy safely, the official answer was, "That would have been the easiest part of the mission." Television descriptions of this "plan" were accompanied by drawings of soldiers in combat helmets patterned with jungle camouflage (so inconspicuous in a desert country) hustling people into cars, somewhat in the manner of the entourage of a presidential candidate or a rock star.

But, of course, none of the final stages was attempted, because three of the eight helicopters malfunctioned (a 40 percent failure rate, as Lieutenant General Daniel O. Graham pointed out). So it was decided to abort the mission; then, in taking off, a plane and a helicopter collided, and the result was the tragedy of eight American deaths.

After the "plan" had failed, we proceeded to ask the country which we had invaded to please return the bodies of our dead soldiers and widely hinted that we had received help from within Iran, thus jeopardizing the lives and safety both of the more than 200 Americans still at liberty there and of the members of the present government who are perceived as being moderate and disposed to settle the hostage situation peacefully.

The proud designer of this "plan" was the President's National Security Adviser, Zbigniew Brzezinski, the jolly fellow who raced Chinese diplomats when he visited their Great Wall, shouting "Last one to the top gets to fight the Russians in Ethiopia!" According to *Time* (May 12, 1980) Brzezinski not only was given the assignment of designing an Iranian rescue plan last November, but while it was cooking was the first person on the President's appointment list every day and often made the last phone call to

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him in the evening as well.

The question remains: *how could they?* A "Reporter at Large" article in the April 14 issue of *The New Yorker,* written by Elizabeth Drew before anyone knew that the Iranian intervention was in the works, sheds a great deal of light on the dubious process by which similar decisions have been arrived at. It has to do with the President's image in his campaign for re-election.

Apparently there has been an ongoing behind-the-scenes battle among some of the President's advisers: should he be seen as a hawk or a dove? Georgia is a state with a military tradition—so much so that Carter as Governor proclaimed "American Fighting Man's Day" in response to Lieutenant Calley's conviction for murdering civilians at My Lai. And Carter's Georgia advisers—particularly Hamilton Jordan, according to Elizabeth Drew—became concerned lest he be seen as too "dovish." This is the real reason, apparently, that the call for draft registration was inserted into the State of the Union address even though the Selective Service Administration had just reported that it wasn't necessary. It seems that Carter himself wanted it because he wanted to make a move that Ted Kennedy was sure to oppose. The plan was to attack Kennedy for opposing this "strong" measure, and to "charge" him with supporting cuts in the defense budget.

Then a funny thing happened on the way to the voting booths. Carter's pollster, Pat Caddell, found that a substantial number of voters were disturbed by all the talk of war. So in his news conference of February 13, the President stressed that he would rely on "peaceful means" for freeing the embassy hostages. And—presto chango! — he killed a radio spot that accused Kennedy of waffling on defense spending and substituted a new one which featured Jimmy Carter, Peacemaker. Drew quotes one adviser as saying, "We were rolling down the hawk trail, and Caddell pushed us off."

What could have happened to make the hawk trail attractive again? At the end of her article, Drew reports that the announcement of a positive step toward releasing the Iranian hostages coincided with a substantial primary win for the President. He announced at 7:20 A.M. on the morning of the Wisconsin primary that the government of Iran was taking custody of the hostages from the militants—and he won the primary handily. But the Carter people were worried, Drew says, about how to influence the Pennsylvania primary at the end of April. It's not quite clear *how* the Wisconsin win could have been interpreted by the politicians as a mandate for a cops and robbers confrontation to "do something" rather than as what it plainly seems to be, a positive reaction to a de-escalation of the hostage situation. But one can see the attraction, for a limited mind, of the President being able to claim credit for a successful coup in the middle of a re-election campaign. Policy decisions are made in strange ways when elections are coming up. Remember Nixon's Committee to Re-Elect the President and the daring raid *it* planned on the Democratic Party headquarters?

All this might be funny if our young people's lives—maybe all our lives—weren't at stake. Draft registration to win, not a war, but an election? Sending armed soldiers into a country whose leaders had already announced that the border clashes with "American puppet" *Iraq* might jeopardize the lives of the hostages, in order to appear "strong" and "decisive" to primary voters? Public figures here and abroad made soothing noises when the news broke, as if too alarmed to be critical.

Then Cyrus Vance raised his voice in opposition and made public the fact that he had submitted his resignation four days before the raid, to try to stop it. An editorial in *The Nation* pointed out that it was an odd concept of responsible government for the adviser who was *right* to have to quit. *The New Yorker* called Vance's announcement "a single courageous act that ... temporarily checked the seemingly inexorable momentum toward war." Libertarian Party presidential candidate Ed Clark, when asked for a comment on Vance's resignation, applauded it as an act of principle, and pointed out that the last such resignation occurred 65 years ago, when Woodrow Wilson's Secretary of State resigned to protest actions which he feared would lead the United States into World War I. The parallel is much too close for comfort. ❑

—Joan Kennedy Taylor

DON'T FORGET TO ASK FOR MORE MONEY
HELICOPTER MAINTENANCE
(WITH THANKS TO HIRSCHFELD)
© 1980 WASHINGTON STAR UNIVERSAL PRESS SYNDICATE
"HELLO? YES, CHIEF, THIS IS THE PENTAGON. YOU WANT ANOTHER RESCUE MISSION? READY WHEN YOU ARE, CHIEF— JUST SAY THE MAGIC WOID!"

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LETTERS TO LR

To intervene or not to intervene

WE ARE TROUBLED BY three aspects of the editorial by Roy Childs and Milton Mueller, "Afghanistan—The War Threat" (March, 1980).

1.) We do not understand why *LR* connects its call for a non-interventionist foreign policy with its opposition to the draft, but never with the Libertarian Party's opposition to taxation. It is the power to tax, even *more* than the power to draft, which enables the government to conduct foreign interventions and wars, and to plunge the Earth into nuclear holocaust over the "vital interests" of a few individuals. Moreover, by missing the tax-connection, we think *LR* is missing a big opportunity to teach many non-libertarians who already oppose war, why it's not "selfish" to oppose taxation.

2.) We disagree with *LR* that "... the major wars of this century have not resulted from any conscious decision to go to war, but are the inevitable consequences of a series of mistakes, misinterpretations, and blunders." We think the evidence (including *LR*'s own July-August 1979 issue) contradicts *LR*'s present assertion. The U.S. government's policy of fighting for middle east oil is a clear and deliberate *policy,* not a blunder or mistake. The government knows exactly what it is doing.

There is another reason to challenge the call to "remember above all" that wars begin by blunder and mistake. That claim obscures a powerful argument in favor of libertarianism, namely: Governments which make war do *not* do it by accident or mistake. They do it intentionally *even though* war violates individual human rights. If governments have power, then human rights get violated. If non-violation of human rights is desired, then we must "roll back the state" everywhere.

3.) Ultimately, the issue is not whether the U.S. has an interventionist or non-interventionist foreign policy, but whether the government has any *right* to do anything to anyone anywhere, abroad or at home. We urge *LR* always to put foreign policy in its larger context, in order to be comprehensible to non-libertarians.

Even when we are discussing the existing American government, which has the power (although not the right) to have a foreign policy, we keep balking inwardly at *LR*'s implication (by omission) that only two choices exist: either (a) continuing to intervene on the side of various foreign tyrants who are serving certain economic interests in this country, or (b) not intervening at all.

We ask, why is the alternative of intervening on the side of liberty treated by libertarians as if it did not exist? Strict non-interventionism effectively says, "To hell with the rights of the Afghanis," which seems to disqualify the libertarian movement as a movement for human rights.

Moreover, strict non-interventionism is an inadequate concept to resolve a serious, unlibertarian conflict of rights among *American* citizens. Those who believe "Better Dead Than Red" have (with the nuclear arms race) succeeded in imposing the high risk of nuclear holocaust on the pacifists who do not consent; and those who think "Better Red Than Dead" would (if they could win unilateral disarmament) impose the high risk of enslavement on those who believe in defending their freedom. This pro-

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found violation of rights *inside* Fortress America must exist as long as a nuclear bully exists anywhere on Earth.

The fact that even *we* can't have our rights until *everyone* has liberty, makes strict non-interventionism into a policy which needs further exploration.

EGAN O'CONNOR
JOHN W. GOFMAN
San Francisco, CA

Childs replies:

THERE IS ONE GOOD point made in the Gofman-O'Connor letter, and one confused point. Let me acknowledge the former and clear up the latter.

I agree with Gofman and O'Connor that the libertarian call for a non-interventionist foreign policy should be connected with the libertarian opposition to taxation. In our special issue on "Energy and American Foreign Policy," as well as in articles and editorials from time to time, we have noted the dependence of our interventionist foreign policy on high taxes. Perhaps we have taken it too much for granted that our readers already understood the libertarian position that involuntary taxation (perhaps a redundancy) is theft.

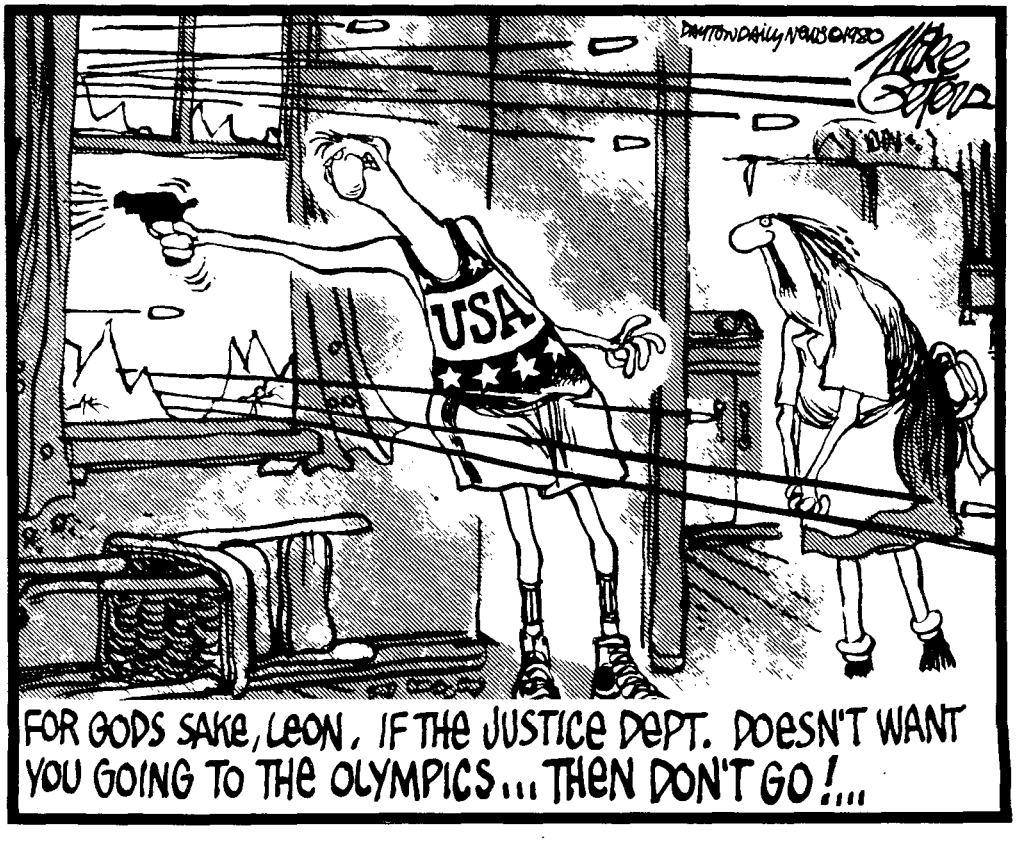
If there is a conscious decision to go to war in the Middle East in order to secure American (or Western) access to oil, then *that* war will be the result of a conscious decision, a decision formulated in part because of confusions, mistakes and blunders in the area of energy policy. But I think a war is more likely to come as a result of Russian and American misinterpretations of events and motives, and to be ignited by some relatively minor incident. In which case, conscious decisions and blunders will work together to launch us on the road to war. But *most* wars —World War I in particular and perhaps World War II as well—*have* resulted from "a series of mistakes, misinterpretations and blunders." On the other hand, does it really matter? The result is the same. My point was to underscore that "mistakes, misinterpretations and blunders" *can* in fact launch a war, which is why we should carefully scrutinize foreign policy moves.

I disagree completely with Gofman and O'Connor in their claim that "ultimately, the issue is not whether the U.S. has an interventionist or non-interventionist foreign policy, but whether the government has any right to do anything to anyone anywhere, abroad or at home." Mostly, I think this is a confusion, or a distinction without a difference. A non-interventionist foreign policy is a policy of *limits* placed on what the government is permitted to do in foreign policy. Its full implementation would mean that government would not have the right to enter into entangling alliances or mutual defense treaties, to provide economic or military aid, or to send troops into other countries. Most of all, it would mean that government would have no right to enter into any military conflict unless the U.S. were directly attacked. Claiming that the U.S. should follow a non-interventionist foreign policy is akin to saying that it should not interfere with freedom of speech, or that it shouldn't tax people without their individual consent. Advocating a non-interventionist foreign policy is advocating that government action in a certain sphere be carefully and rigorously *limited*.

The issue of benevolent intervention is easier to dispose of: there is no such thing. One of the reasons most libertarians are non-interventionists is that interventionism cannot realistically be carried out without coercion, both of Americans at home and of citizens of other countries abroad.

The Afghanistan situation is even easier to dispose of. Personally, I wish the Afghans well in their struggle against the oppression, domination and murder of the Soviet Union. But I don't have any illusions about their being "freedom fighters," as the ever-wise Ronald Reagan has called them. They *are* fighting for freedom from Soviet domination, but there is more to freedom than that: China is not dominated by the Soviet Union, but it is hardly "free" on that account. If the Afghans succeed in pushing the Soviet butchers out of their country, what will they do then? The likelihood is that they will impose the same sort of system in Afghanistan as Khomeini and the Revolutionary Council have in Iran: an oppressive, reactionary state apparatus dedicated to anti-libertarian "Islamic law." If we intervened to help the Afghans throw off the yoke of Soviet imperialism, then we would *ipso facto* be partly responsible for the crimes committed after their success.

That is the paradox of intervention: whenever we intervene to "help" some other people in conflict, we strengthen and usually arm human beings who are anything but committed to protecting human rights. Our arming of the anti-Commun-


DAYTON DAILY NEWS 1980
Mike Peters
USA
FOR GODS SAKE, LEON, IF THE JUSTICE DEPT. DOESN'T WANT YOU GOING TO THE OLYMPICS... THEN DON'T GO!...

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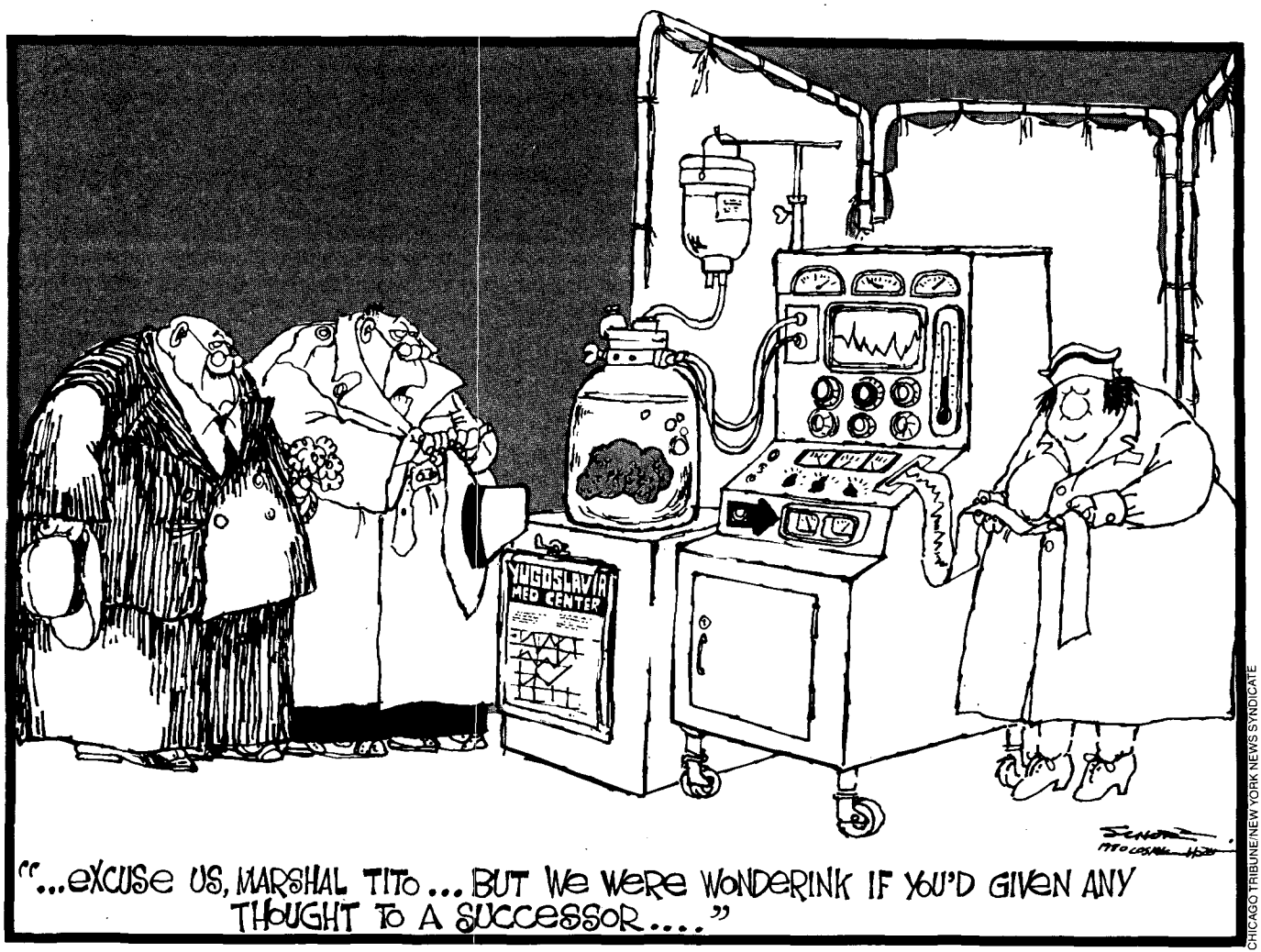
YUGOSLAVIA MED CENTER
"...EXCUSE US, MARSHAL TITO... BUT WE WERE WONDERINK IF YOU'D GIVEN ANY THOUGHT TO A SUCCESSOR...."
CHICAGO TRIBUNE/NEW YORK NEWS SYNDICATE

ist Shah of Iran was a case in point. Paternalism is as harmful in foreign affairs as it is in domestic affairs. It always has consequences other than those intended.

Far from saying "to hell with the rights of the Afghanis," we support the rights of the Afghans to be free of both Soviet domination *and* of the domination of religious fanatics. As individuals, I believe we have the right to aid them in whatever way we choose; as political animals (or anti-political animals), we should advocate that our state keep out of other people's conflicts. It isn't always *possible* for us to do much to protect someone else's rights. Instead of benevolent intervention, what we *really* need is an international revolutionary libertarian movement dedicated to overthrowing tyranny and achieving liberty everywhere.

But the U.S. government should do one thing and one thing only: keep its hands off other countries, to prevent the widening of conflicts and wars, and to avoid confrontation and possibly a nuclear war. *That* is the *real* precondition of the triumph of liberty *anywhere,* at home or abroad.

"The National Letters"

WELL, YOU DID IT. I PUT everything else aside and read the latest *Libertarian Review* [March] cover to cover, non-stop. When my usual punk rock station didn't come in due to an "atmospheric disturbance" we were having down here in the middle of Riggenbach's article on aesthetics, I actually tuned in classical background music. It just seemed to fit so well.

SAMUEL EDWARD KONKIN III
Long Beach, CA

RIGGENBACH'S ARTICLE on the current state of American letters [March] was fascinating, and might I say, long over-due. There is indeed too little appreciation of much of our fiction, both as an art-form and as a platform of social and philosophical thought.

There is a developing open forum for a blend of both our works, especially as judged by newly arising themes in SF and by the Prometheus Award Committee's interest in the genre. I sincerely hope that this state of affairs will continue, to both our benefits.

PETER D. PAUTZ
Executive Secretary
Science Fiction Writers of America, Inc.
Hackettstown, NJ

I WAS EXTRAORDINARily impressed by Jeff Riggenbach's "The National Letters" in the March issue. Although I am not well read, I have dabbled in literature here and there; Riggenbach's theses strike me as true, and have rekindled old urges to read more literature.

And in general, *LR* is excellent. *LR* is the only magazine that I read regularly—actions speak louder than words.

JIM STEIN
Woodside, CA

I ENJOYED JEFF RIGGENbach's remarks on "The National Letters," though I have some minor carps. Fowles may be British, but he is still a giant. And Gardner is a schizophrenic. The Gardner who wrote *October Light* is *not* the same Gardner who wrote *Jason and Medea.* They are worlds apart.

FREDERIC REYNOLDS
Fort Lauderdale, FL

Riggenbach replies:

I HAD THREE MAJOR purposes in writing "The National Letters." I wanted

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to argue that the fundamental, defining characteristic of American literature is its broadly libertarian spirit. I wanted to decry the snobbish tradition of valuing only those American works which slavishly imitate European (and especially English) models. And I wanted to suggest that there is a clear connection among three current cultural trends which might seem at first glance to be unrelated: the widely noted trend toward libertarian sympathies among voters and taxpayers; the widely noted trend toward general popularity and even, in some quarters (mainly academic), a kind of literary proto-respectability, for science fiction; and the widely noted trend toward a kind of fossilized-while-yet-living cultural irrelevance for the literary establishment. In the course of winding my way toward realization of these purposes, I quite inescapably invested a good deal of space in the business of what may frankly be called "boosting" American literature. In the process I seem to have given a few readers, of whom Mr. Reynolds may be taken as fairly representative, the impression that I see no value in English and other European literature. Nothing could be further from the truth. In fact, I regard English literature (and Irish literature and Russian literature and German literature and French literature, for that matter, but let us stick with one case in point) as one of the great, enduring monuments of human civilization. I am not prepared to argue that American literature is in any meaningful sense *better* than this—only that it is *different*, and in its own way also an enduring monument.

Similarly, I never meant to give the impression that I regard all the members of our current literary establishment as talentless—only that I regard the good books they write (and they do, undeniably, write them from time to time) as good Colonial works rather than as good American works.

Urban renewal and the rights of the poor

WHEN I SAW DOUG BANdow's article on the housing crisis, I quickly skimmed over it, hoping to see some mention of the Community Redevelopment Agency's activities in Los Angeles or elsewhere. I was disappointed when he stated that urban renewal has been discontinued. This is absolutely untrue. Last year, for example, an apartment building in the Pico Union area of Los Angeles was taken by eminent domain so that "Pep Boys" could build a headquarters there. There are redevelopment projects going on all over Los Angeles, and the C.R.A. of the City of Los Angeles is empowered to take land, clear it, and sell it to private developers.

The people being displaced continue to be the poor and politically powerless. The "anti-regulation," "anti-government" builders work closely with the City Council and the C.R.A. to violate the property rights of the poor.

But I guess I shouldn't feel too worried because my Councilman, Joel Wachs, said, "There is no way I would support massive, wholesale taking of homes here. You could count on two hands the most I would approve, and those only if the overwhelming majority of the people recognize it's for the public good."

ROBERT COLBURN
North Hollywood, CA

Bandow replies:

I APPRECIATE MR. COLburn's writing to bring attention to the Los Angeles Community Redevelopment Agency. Space limitations prevented me from discussing it as I would have liked. The particular Federal urban renewal program to which I referred *has* been discontinued; others, unfortunately, remain, and are no less destructive or immoral.

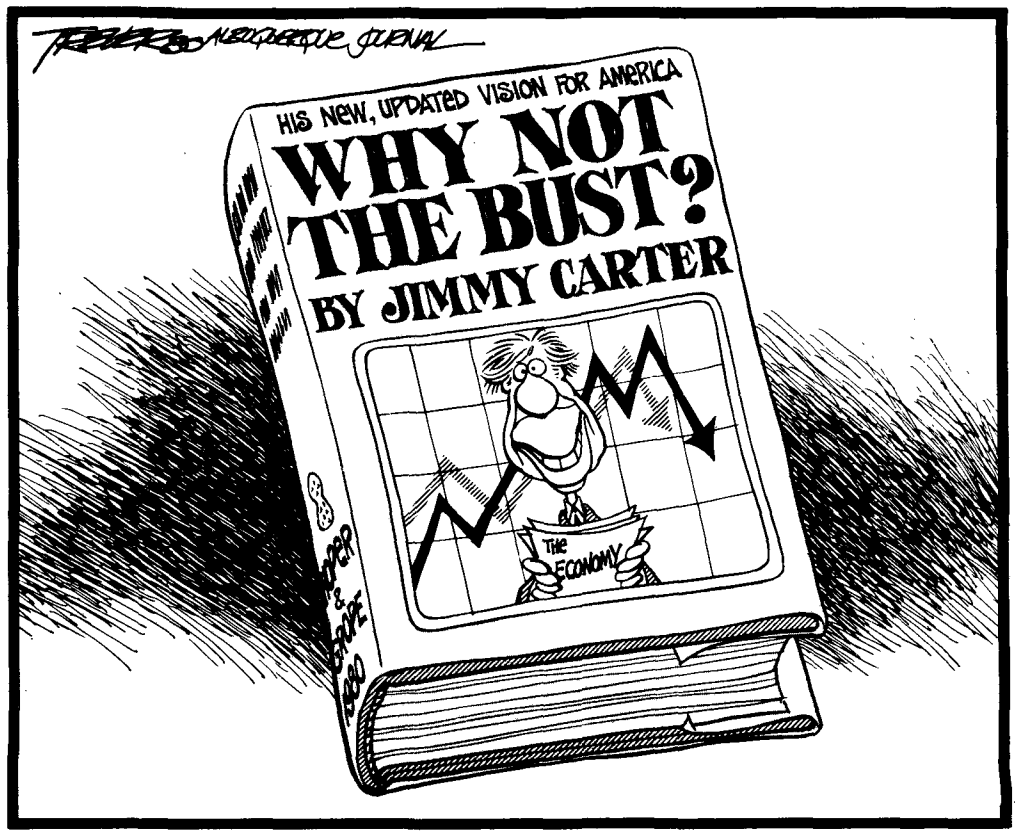
Our apologies

IN THE INTEREST OF accuracy, we wish to point out the error in David Brudnoy's review of "The Amityville Horror" as it appeared in the April 1980 issue of *The Libertarian Review* when he wrote: "Nor did 'The Amityville Horror' succeed as a money-making movie."

We do not know where or how Mr. Brudnoy reached this conclusion, but for the record it can be stated that this film has grossed over $60 million worldwide and its phenomenal boxoffice success has resulted in its re-release this spring.

PETE LATSIS
Field Publicity
Filmways Pictures, Inc.
Beverly Hills, CA

LR *welcomes letters from readers. Letters intended for publication should be typed, double-spaced, and addressed to: Letters to the Editors, The Libertarian Review, 1620 Montgomery Street, San Francisco, California 94111.* ❑



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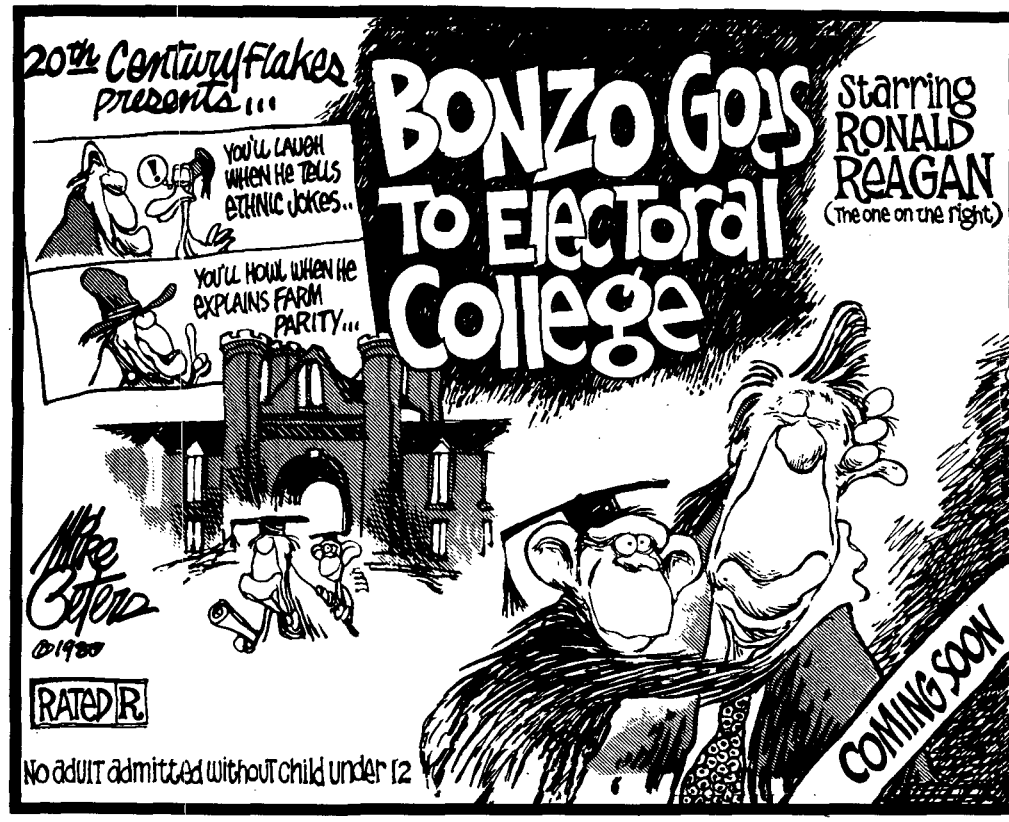
20th Century Flakes presents...
BONZO GOES TO Electoral College
Starring RONALD REAGAN
(The one on the right.)
YOU'LL LAUGH WHEN HE TELLS ETHNIC JOKES..
YOU'LL HOWL WHEN HE EXPLAINS FARM PARITY...
Mike Peters
©1980
RATED R
No adult admitted without child under 12
COMING SOON

The battle for Reagan's mind

BRUCE BARTLETT

IN MARCH IT BECAME clear that Ronald Reagan would almost certainly be the presidential candidate of the Republican Party this fall. As this reality became apparent it also became apparent that a battle was taking place within the Reagan campaign between what could be called the "libertarian" and "conservative" factions. The outcome of this struggle could tell us a great deal about what Ronald Reagan will be like as president of the United States—something which appears quite likely given the present course of political, diplomatic and economic events.

On the "libertarian" side of Reagan's advisors are Congressman Jack Kemp of New York; Jude Wanniski, a former editorial writer for the *Wall Street Journal;* and Professor Arthur Laffer of the University of Southern California. These men are urging Reagan to take a strong position in favor of across-the-board tax rate reduction and a return to the gold standard to stop inflation. They are generally referred to as "wild men" within the Reagan camp, although Reagan *has* officially endorsed the Kemp-Roth tax bill to cut individual income tax rates by a third.

On the "conservative" side are basically the old line Republican economic advisors: Arthur Burns, former chairman of the Federal Reserve Board; Herb Stein, former chairman of the Council of Economic Advisors; George Shultz, former Treasury Secretary; and others. They oppose the "radical" views of the Kemp-Wanniski-Laffer group and are urging Reagan to adopt a more conventionally conservative economic program: a balanced federal budget, a tight money policy, and floating exchange rates. In other words, they want Reagan to do exactly what President Carter is doing—pursuing a program which has made the Republican Party what it is today, a minority party.

The "libertarian" camp, which threw in with Reagan early while the more conventional Republicans were advising Baker, Bush and Connolly, definitely feels threatened by the "conservatives." And in an effort to maintain their position the "libertarians" have taken to the media—Wanniski in particular. For months, Wanniski has been filling his newspaper columns with stories about the ongoing battle for Reagan's mind. Unfortunately, in early April he went too far in a long personal interview in the *Village Voice* (April 7, 1980). In this interview, Wanniski seemed to take credit for inventing the Laffer Curve, inventing the Kemp-Roth Bill, and taking Jack Kemp, an obscure Buffalo congressman, and making him a major national spokesman for tax reduction. He also made some rather amazing claims for what an across-the-board tax reduction would accomplish, saying it would reduce prostitution, pornography, drug use, and even abortion.

The "conservatives," of course, seized upon the Wanniski interview (later

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reprinted in the *Washington Post*) to ridicule all of the policies proposed by the "libertarian" faction. Some of Kemp's advisors began urging him to put distance between himself and Wanniski, lest he lose influence with Reagan. And others, familiar with Wanniski's true role in the tax reduction movement, began trying to set the record straight themselves, lest the ideas associated with Wanniski be discredited. (See Paul Craig Roberts's article, "Caricatures of Tax-Cutting," in the *Wall Street Journal*, April 24, 1980.)

Ultimately, the influence of the ideas associated with the Kemp-Wanniski-Laffer group within the Reagan campaign will be determined by two factors. The first is how well they hold up at the voting booth. Up until now the promise of an across-the-board tax cut has been very popular, especially with blue-collar workers who usually vote Democrat. As the inflation rate begins to subside and the recession takes hold, it will probably become ever more popular. Second, it appears that Reagan himself does generally endorse the tax cut program, as do his most intimate domestic advisors, Dr. Martin Anderson and Senator Paul Laxalt. Thus, unless something unforeseen happens, Reagan will probably remain committed at least to the Kemp-Roth program.

Can Reagan be depended upon to continue supporting tax cuts once elected president? No one can say, of course, since other presidents have been known to renege on campaign promises. In any case, we will know soon, for Reagan will have to begin work on his economic program quickly in order to have any hope of getting it through a Democratic congress. And Reagan knows too well, from the example of Margaret Thatcher, that fast results cannot be depended upon. ❑

photo/Gordon P. Yee

ATTEND THE 1ST SLS NATIONAL CONVENTION

After two years of dramatic growth, Students for a Libertarian Society is bringing together libertarian student activists from all over the country for the first SLS National Convention, August 1 through 4, at the University of Michigan at Ann Arbor.

SPEAKERS...

There's something for everybody—students and non-students alike—in the program: LP Presidential candidate ***Ed Clark*** *on the future of the Libertarian Party; keynote speaker* ***Roy Childs*** *on the history of the movement;* ***Jeff Riggenbach*** *on what culture has to do with libertarianism;* ***Leonard Liggio*** *on the crisis of American foreign policy and the prospects for an international, revolutionary libertarian movement;* ***Milton Mueller*** *and* ***Eric Garris*** *on antiwar organizing;* ***Michael Lipson*** *on energy; workshops on* ***feminism, free market economics****, and more.*

POLITICS...

First item on the agenda: defining the New Politics—discussing and debating the central challenges facing libertarianism and hammering out an SLS Statement setting forth our approach to them. Participants will not only shape the future of the movement, but also that of SLS itself, by electing a Student Board of directors.

SPECIAL EVENTS...

The convention will begin with a showing of the award-winning documentary "The War at Home" and culminate in a banquet, plus numerous parties, both planned and unplanned

Inexpensive overnight accomodations are available at the University. A few travel scholarships are available to student members.

YES ***I want to help shape the future of the libertarian movement. Enclosed is a $5 reservation fee; send a registration form to me immediately ($5 fee applies to registration cost).***

STUDENT / NON-STUDENT / SLS MEMBER?

APPLICATION FOR TRAVEL SCHOLARSHIP?

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_____

Send To: STUDENTS FOR A LIBERTARIAN SOCIETY 1620 Montgomery St., San Francisco, CA 94111

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Backward Christian Soldiers

ALAN CRAWFORD

CHRISTOPHER BROWN/PICTURE GROUP

Gassy old James Farmer, the longtime civil rights activist, said at a news conference on the afternoon of the "Washington for Jesus" rally of right-wing fundamentalists in Washington last month that "if God looked down on [the Mall] today, He probably would say, Thank God, I'm not a Christian."

For the uninitiated, Farmer is a founder of the Congress On Racial Equality and now heads the Coalition of American Public Employees—he has his own axes to grind. So, for that matter, did his news conference colleagues. Liberals all, they included a Mormon feminist who supports the ERA, a self-proclaimed lesbian minister and the local Unitarian guru. They called the meeting to warn the rest of us of the pending merger of Church and State they see being cooked up by the evangelists who orchestrated the April 29 rally. It was an odd charge given the intense political involvement of the religious leaders who issued the warning. One vocal critic, for example, was Charles Bergstrom, himself a clergyman as well as lobbyist for the Lutheran Council's Office of Government Affairs.

Their alarm, one suspects, is unfounded. If the Good Lord's reaction really was anything like Farmer suggests, odds are that it was out of sheer embarrassment rather than any otherworldly bellyful of moral indignation.

Which is not to say that the organizers of "Washington for Jesus" didn't drum up a sizeable crowd. An estimated 200,000 showed up, according to U.S. Park Police. That was some 25,000 more than turned out last October to see the Pope give Mass, but all the same well below the one million promised by "One Nation Under God," the collection of video preachers, tent-show revivalists and squeaky-clean entertainment figures who put the show together.

It was the largest religious gathering in Washington for some years, and probably the loudest. To accommodate the crowds, the city leased two hours of subway time for a special shuttle train from an all-night religious songfest at RFK Stadium to the Mall, a train the pilgrims nicknamed the "Holy Roller." The singing began that night at the football field and didn't let up until the following evening at the close of the rally downtown.

They sang and they prayed, come rain or come shine—mostly come rain. The red, white and blue bunting that festooned the bandstand from which the preachers held forth was streaked and stained from two days' drizzle, but the crowd remained in high spirits nonetheless. In fact, a picnic atmosphere prevailed, as the Faithful from all over sat in folding chairs and knelt in prayer on muddy blankets. Mostly Middle Americans (and quite a few blacks), they carried American flags and banners proclaiming their faith ("Jesus Is Lord in Columbus, Ohio"), afflicting the comfortable ("Repent!") and comforting the afflicted ("Fear Not Little Flock").

They heard one preacher after another all day long, and the notion of American Paradise Lost got big play. According to the Reverend Bill Bright who heads Campus Crusade International of Arrowhead Springs, California, America "is disintegrating because we have turned from the faith of our fathers." But others insisted that there's still hope. "In time of crisis in our land, to come and say, God of our fathers, you will save us—that is why we are here," said the Reverend Pat Robertson who, as host of the Christian Broadcasting Network's "700 Club," doubles as the Johnny Carson of the Hookworm Belt.

There were other bright spots as well. One of the lesser

Two hundred thousand preachers, revivalists and born-again Christians participated in the recent "Washington for Jesus" rally which was held so that the faithful could pray for America and save her from the grip of humanists, atheists, hedonists, and the "Satanic Conspiracy of International Bankers."

CHRISTOPHER BROWN/PICTURE GROUP

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luminaries, whose name I didn't catch, was happy to report that "God is working once again in the Methodist Church," though he did call on the Almighty to "forgive our district superintendents."

There was at least a trickle of politics on tap, as the critics had warned. Most of the preachers railed against abortion, homosexuality and "permissiveness" in general, and the Rev. Bright even took on Communism and the sad state of America's defenses. My personal favorite, however, was a thunderous wowser whose visions took the form of a Washington, D.C., travelogue. "I'm looking for the Holy Ghost to go to the Supreme Court! To walk through the halls of Congress! To go to the Capital!" he bellowed, building to a mighty crescendo at "and to the Department of Health, Education and Welfare!" when the multitude burst into wild cheers.

Given the antics on the bandstand, it was sometimes difficult to tell the headliners from the sideshow acts. They were colorful too. One concerned American from Silver Spring, Maryland handed out a mimeographed "Repentance Beacon" that exhorted readers to refrain from using "minced oaths" like "Golly Gee" and called on the nation to acknowledge its waywardness in giving women the vote in 1919. The republic has been on the skids, according to this oracle, ever since the decision was made to preserve the Union, "a revolutionary action ... taken under the wicked leadership of Abraham Lincoln who was in touch with the demonic world via the sessions with mediums in the White House."

The people at the "Repentance Beacon" have given such matters much thought, apparently, and have spelled out their political theory in some detail. "The world today," they reveal, "is in the grip of a Satanic Conspiracy of International Bankers headed by David Rockefeller of the Tri-Lateral [sic] Commission, the Bilderbergers, and the Council on Foreign Relations. Jimmy Carter, Ronald Reagan and John Anderson are all safely in the pockets of the money men.... The Rockefeller-Rothschild Gang are [sic] working gradually to reduce the world to a centralized communistic system which will guarantee them monopolies such as Pepsi has in Red Russia and Coke has in Red China."

This may sound a bit far-fetched to you and me, but it's pretty standard stuff among these gents. Pat Robertson, who is after all one of the "One Nation Under God" headliners, believes much the same thing. The genial graduate of Yale Law School and son of former U.S. Senator Willis Robertson of Virginia spoke out last year against "the humanistic/atheistic/hedonistic influence on American government," which he too said was the result of control by the One Worlders at "the Trilateral Commission and the Council on Foreign Relations."

Specialists in the field say Robertson and his ilk reach some 100 million Americans each week on 36 wholly religious television channels, 1,300 radio stations and dozens of gospel television shows that buy time on commercial TV. Their entire constituency nationwide may consist of more than 50 million "born again" Christians, mostly Protestants, plus 30 million "morally conservative" Roman Catholics and a few million Mormons and Jews. That's "enough votes to run the country," Robertson told *U.S. News and World Report*. "And when the people say, 'We've had enough,' we are going to take over."

Threats like that give the willies to liberals like our friend James Farmer, and he and his friends had been bracing for the arrival of the Twice Born since planning began months ago. Back then the rally was to have been explicitly political, with Christian Voice—a Pasadena-based political lobby that recently issued a Congressional report card rating elected officials on "moral issues"—consulting in the preparations.

Senators Jesse Helms of North Carolina and John Warner of Virginia were active, too. The rally would feature sympathetic politicians who would be asked to address the throng. Original preparations also called for the platform from which the sermons were broadcast to have seats for every Member of Congress, with their names emblazoned on them. That way, one Washington-based Christian activist told me, the preachers could acknowledge the politicoes who showed up and "zero in on the empty chairs."

In January the leaders went so far as to issue a "Christian Declaration" that denounced abortion, homosexuality and excessive government spending, complaining that "the truth of God is taken from our schools by action of government, while unbridled sexuality, humanism and satanism are taught at public expense." This manifesto was withdrawn, however, when the liberals got wind of it, and the political plans were dropped too: especially outraged was Oregon Senator Mark Hatfield, a "born again" Christian but a liberal, who met with the leaders to express his misgivings. It was made clear at the meeting, according to one source close to the planning, that if the right-wingers did not back off, the tax-exempt status of "One Nation Under God" would receive very close attention indeed.

At that point, my source told me, the leaders "did a 180-degree turn," announcing that there would be no political speeches and no politicians would be allowed to address the crowd. Even so, the rally was attended by Senators Helms and Orrin Hatch (a Utah Mormon) and several congressmen. Pat Boone, who had come to croon at the stadium songfest, put in an appearance at a fundraiser for California Congressman Robert K. Dornan, held at the home of New Right direct mail king Richard Viguerie.

At the rally itself, however, much care was taken to make sure the speakers didn't get too political—and with a fair amount of success. Even if they had gone full speed ahead at politics, though, odds are they wouldn't have made much headway. These aren't the world's most politically sophisticated people, after all. And judging from the way the Faithful dealt with the few infidels who dared to wander through their midst, the Ayatollah Khomeini has plenty of admirers among the born-again. When ten or so bedraggled Yippie refugees from the'60s began to shout, "Sex is fun!" they were chased by a fiery-eyed zealot who screeched, "Get Satan out of here!" while several others began fervently to pray—with no noticeable result—for the Yippies' exorcism. But the tension soon subsided and the moment passed, as boob-tube newscasters say, "without incident."

Oddly enough, according to one report, more fury was expended in a heated exchange the evening before on the "Holy Roller." A crew of Nazarenes from Pennsylvania had burst into a rousing rendition of "Go Tell It On The Mountain," while behind them in the subway car, a "nondenominational true believer in the faith of our Lord and King," shook his knotted fist at the revellers and shouted—"*Repent!* In the name of Jesus Christ! We didn't come here to disco! We came to pray for America!"

The speakers themselves didn't do much more than that, but their approach to foreign policy matters was at least as effective as Jimmy Carter's. Robertson, for example, beseeched the Almighty to "reach into Iran and free the hostages to give us a token that You have heard us." So far, it's still God's move. ❑

Alan Crawford is a Washington-based freelancer who writes regularly for *The Nation*.

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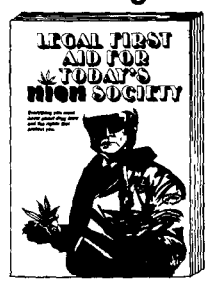
Only YOU can prevent a drug arrest.

"If you don't want to be one of the half million people who will be arrested for drugs this year, you'd better rush right out and buy Legal First Aid, one of the most concise, readable and thorough books written to keep you out of the maw of the law."

High Times Magazine



Take a moment and think about the risk of arrest you face every day . . . and there is a very real risk. Last year that risk became a reality for more than 500,000 people . . and no one ever thought it could happen to him. Not only that, but the great majority of those people actually contributed to their own arrest and conviction because they were uninformed or misinformed about today's drug laws and their rights.

A practical knowledge of the rights that protect you is vital to your freedom. The police officer won't assert your rights for you and the judge is prohibited from doing so. Your lawyer can only assert your rights after you are arrested, but that is too late. Ignorance of the law is no excuse. It is the law that you are presumed to be aware of your Constitutional rights. Your failure to exercise them properly has the practical effect of eliminating any protection they may have given you.

LEGAL FIRST AID FOR TODAY'S HIGH SOCIETY explains how you can assert your rights in a reasonable and effective manner. Actual case illustrations provide a realistic view of the patterns of behavior that often result in otherwise avoidable search and arrest situations. By recognizing these patterns in your daily life, you can reduce the chance of a confrontation ever occuring. Written by two experienced lawyers in easy to understand language, it is authoritative, up to date,practical . . . and essential.

EVERYTHING YOU MUST KNOW ABOUT DRUG LAWS AND THE RIGHTS THAT PROTECT YOU.

1. How Legal First Aid Can Help You
2. The Exclusionary Rule: Why The Evidence Against You May Be Inadmissible
3. Limitations On Your Privacy
   - A. When Does An Officer Have Probable Cause To Search Or Arrest You?
   - B. Plain View Seizures
   - C. Consenting To A Search
   - D. Protecting Your Right To Privacy
4. Confessions And The Miranda Warnings
   - A. Your Right To Remain Silent
   - B. Your Right To Consult An Attorney
   - C. Waiving Your Rights
   - D. Custodial Interrogations: When The Miranda Warnings Apply
   - E. Why Do People Confess?
   - F. Interrogation Techniques
   - G. Promises Of Leniency
5. Search Warrants
   - A. Execution Of The Search Warrant
   - B. Knock And Identify Requirement
   - C. Extent Of The Search Allowed
   - D. Plain View Seizures
   - E. Searches Of Buildings Connected With The Residence
   - F. Open Fields
   - G. Innocent Bystanders
   - H. Administrative Searches Of Business Premises
   - I. What To Do
6. Searches Of A Residence Without A Warrant
   - A. Plain View Seizures
   - B. Probable Cause To Enter
   - C. Immediate Need For Warrantless Entry
   - D. Warrantless Entry For Purpose Of Making An Arrest
   - E. Extent Of Search After Arrest
   - F. What To Do
   - G. Warrantless Entries And Searches Based On Hot-Pursuit And Emergency Situations
   - H. Consenting To A Search
7. Searches Of An Individual
   - A. Three Reasons Why A Police Officer May Stop You
   - B. Stops Based On Probable Cause
   - C. Stops Based On Plain View
   - D. Stops And Question
   - E. The Frisk
   - F. Attempting To Dispose Of Illegal Drugs
   - G. Consenting To A Search
   - H. Searches using Unreasonable Force
   - I. Searches Incident To Arrest
8. Rock Concert, Airport, and Prison Searches
   - A. Rock Concert Searches
   - B. Airport Searches
     - (a) Standard Search Procedures At Airport Security Checkpoints
     - (b) Searches Of Checked Luggage
     - (c) Searches Based On The Skyjack Profile Or Suspicious Behavior
     - (d) Air Freight Searches
     - (e) Other Airport Searches
   - C. Searches Of Prison Visitors
9. Searches Of Motor Vehicles
   - A. Guidelines For Stopping And Searching Your Car
   - B. Routine Traffic Stops And Searches
     - (a) Probable Cause Searches
     - (b) Plain View Seizures
     - (c) Consenting To A Search
     - (d) Routine Traffic Stop Procedures
   - C. Stops Based On Probable Cause
   - D. Stops Based On Conclusion That Criminal Activity Is Occurring
   - E. Investigation And Searches Of Parked Cars
   - F. Roadblocks
   - G. Sample Police-Citizen Dialogue
   - H. Search Of Your Car After Arrest
   - I. Impoundment And Inventory Searches
   - J. Abandonment
   - K. Forfeiture Of Your Car
   - L. Situations Requiring A Search Warrant
   - M. Search Of Car Trunk And Luggage
   - N. Searches Of Persons Present In Cars
   - O. Probable Cause And Plain View Searches
   - P. The Protective Frisk
   - Q. Search Of Your Person After Arrest
10. Narcotics Agents, Confidential Informants And Entrapment
    - A. Electronics Bugging
    - B. A Typical Undercover Investigation
    - C. A Typical Undercover Surveillance And Arrest
    - D. Entrapment
11. Customs And Border Searches
    - A. Border Crossing Searches
    - B. Border Searches Away From The Border
    - C. Other Border-Type Searches
    - D. Permanent Checkpoints
    - E. Temporary Checkpoints And Roving Border Patrols
    - F. Strip Searches
    - G. Body Cavities: Vaginal And Rectal Searches
    - H. Drug Courier Profile Searches
12. Drug Related Criminal Offenses
    - A. Possession
    - B. Sale and Intent To Deliver
    - C. Other Drug Related Offenses
    - D. Charges Relating To Prescription Drugs
    - E. Proof Of The Criminal Offense
13. Miscellaneous Items
    - A. Canine Cannabis Connoisseur
    - B. U.S. Mail And Parcel Searches
    - C. Wiretaps
14. Driving While Intoxicated
15. The History Of An Arrest
16. Bail And The Bondsman

Appendix
- A. Affidavit For Search Warrant
- B. Search Warrant

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MARIJUANA
FREEDOM IS THE ISSUE

Life imitates art, said Wilde, and he was right. If it seems otherwise a good deal of the time to those of us who are living it, this may reflect not so much the randomness or unpredictability of life as the incompleteness of our own reading. Life picks some pretty obscure works to imitate sometimes, and if we aren't widely enough read, we'll miss all the obvious allusions and fail to see the design in many of the events that befall us—not only as individuals, but also as a society.

Consider, as a case in point, the long and singularly witless history of marijuana in American society. Here, it would seem, is a narrative in which the main actions of the leading characters—our journalists, politicians and law enforcement officials—have been so utterly without sense or pattern of any kind that no fiction writer could ever possibly have invested them with the kind of unifying coherence which is the *sine qua non* of true art. Surely, we must think if we study the record, in this case life does *not* imitate art.

But we are wrong. Wilde was right. The evidence is to be found in a little known, little read, almost entirely forgotten novel of more than fifty years ago called *Lud-in-the-Mist* by Hope Mirrlees—a satiric fantasy about the attempts by the government of a country called Dorimare to stamp out "the vice of fairy fruit-eating" within its borders.

"The free state of Dorimare," as Mirrlees described it, was a rather prosaic little country, flat, monotonous, and almost utterly without distinguishing characteristics—altogether, exactly the right sort of environment for the narrowly literal-minded burghers who made its public policy. Yet not all of Dorimare was like this, for "toward the west, in striking contrast with the pastoral sobriety of the central plain, the aspect of the country became ... distinctly exotic. Nor was this to be wondered at, perhaps; for beyond the Debatable Hills (the boundary of Dorimare in the west) lay Fairyland. There had, however, been no intercourse between the two countries for many centuries."

Once, of course, it had been otherwise. The proof was "on the painted ceilings of ancient houses, in the peeling frescoes of old barns, in the fragments of bas-reliefs built into modern structures," and perhaps most commonly of all in the designs of the old tapestries which still hung everywhere in Dorimare and "in the tragic funereal statues of the Fields of Grammary," the "picturesque old graveyard" which served its capital city, Lud-in-the-Mist. For in all these places were elaborate "illustrations of the *flora, fauna* and history of Fairyland." Moreover, everyone in Dorimare knew that in centuries past, "fairy things had been looked on with reverence, and the most solemn event of the religious year had been the annual arrival from Fairyland of mysterious, hooded strangers with milk-white mares, laden with offerings of fairy fruit."

Yet by the time of our story, the illustrations on the ceilings and frescoes and bas-reliefs and tapestries and tombstones, the illustrations which were so obvious as to seem undeniable, had come to be denied by the majority of Dorimarites—or, at any rate, to be systematically ignored. And what everyone once knew about the days when "fairy things had been looked on with reverence," everyone had since conveniently forgotten. The people of Dorimare had help in their forgetting, to be sure—their freely elected rulers passed appropriate legislation so that thereafter, "[i]n the eye of the law, neither fairyland nor fairy things existed"—but their memory lapse was doubtless due as much to their own powers of self-delusion (which, like those of most human beings, in books or out of them, were prodigious) as to the efforts of their government officials.

At any rate, slowly but surely, "an almost physical horror came to be felt for anything connected with the Fairies and Fairyland, and society followed the law in completely ignoring their existence. Indeed, the very word 'fairy' became taboo, and was never heard on polite lips, while the greatest insult one Dorimarite could hurl at another was to call him 'Son of a Fairy.'"

Despite this striking about-face in public opinion and public policy, however, the commerce between Dorimare and Fairyland did not end entirely. No shift in public opinion is ever unanimous; no public policy is without its defiant enemies. And so it was that although fairy fruit, the ancient religious sacrament, "was no longer brought into the country with all the pomp of established ritual, anyone who wanted it could always procure it in Lud-in-the-Mist." In fact, the trade in this legally nonexistent substance flourished, "and all the efforts of the magistrates to stop it were useless." But then, these efforts had been rather lackadaisical for many years, during which the magistrates had never even bothered to try "to discover the means and agents by which it was smuggled into the town: for to eat fairy fruit was regarded as a loathsome and filthy vice, practised in low taverns by disreputable and insignificant people, such as indigo sailors and pigmy Norsemen. True, there had been cases known from time to time ... of youths of good family taking to this vice. But to be suspected of such a thing spelled complete social ostracism, and this, combined with the innate horror felt for the stuff by every Dorimarite, caused such cases to be very rare."

As time passed, however, such cases became noticeably less rare—especially in the country districts west of the capital, where Dorimarites, living close to the border, had more direct daily experience with fairy things. Ultimately, during a period known as the Great Drought, they ceased to be rare at all, and "an ever-increasing number of people succumbed to the vice of fairy fruit-eating," while "every day fresh rumours reached Lud-in-the-Mist (it was in the country districts that this epidemic, for so we must call it, raged) of madness,

JEFF RIGGENBACH

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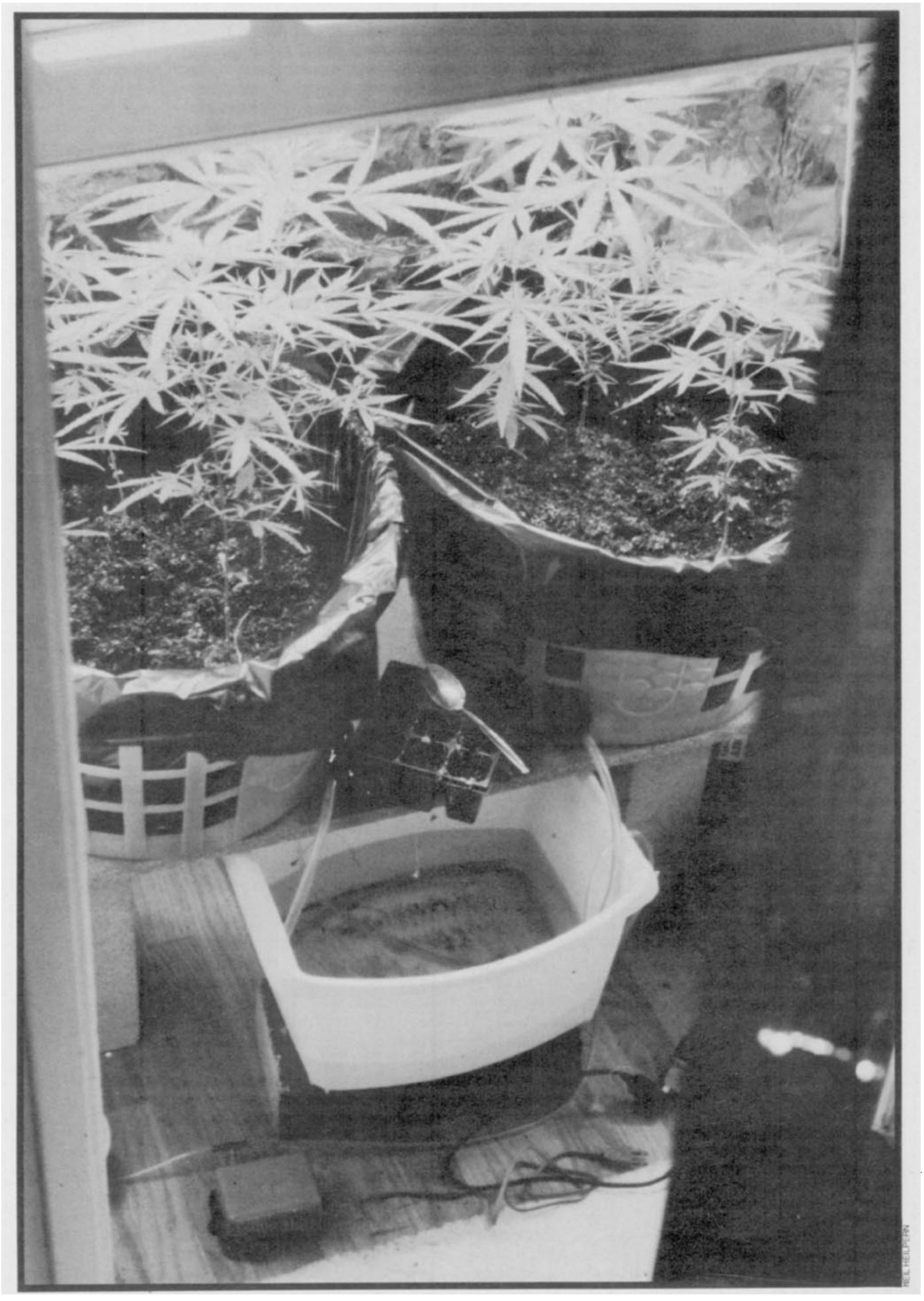

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suicide, orgiastic dances, and wild doings under the moon." Knowing a dangerous drug when they saw one (on top of everything else, fairy fruit had "always been connected with poetry and visions"), the magistrates of Dorimare moved to prohibit its sale, possession and use. "In vain they invented a legal fiction ... that turned fairy fruit into a form of woven silk and, hence, contraband in Dorimare; in vain they fulminated against all smugglers and all men of depraved mind and filthy habits—silently, surely, the supply of fairy fruit continued to meet the demand."

And then, one day, the respectable citizens of the capital city itself awoke in their beds to find the epidemic of fairy fruit-eating in their own backyards—or, to be more accurate, in the bedrooms and favorite gathering places of their adolescent children.

Lud-in-the-Mist was originally published in 1927, at a time when booze (or "spirits," if you prefer the more refined term) was the fairy fruit of the moment. But the details of its story actually correspond much more closely to the details of our national experience with marijuana than to the details of our mercifully brief fling with the prohibition of potable alcohol. In fact, they correspond with an almost eerie exactness to the details of the marijuana story—from that story's shadowy beginnings in the trans-Atlantic slave trade of the seventeenth and eighteenth centuries, to its climax in the 1970s when "pot" became the preferred pleasure drug of tens of millions of otherwise respectable, upstanding, law-abiding Americans.

Like fairy fruit, marijuana was once very highly esteemed.

It was during the "Great Drought" of Prohibition, when people were forced to pay high prices to drink mediocre liquor in speakeasies, that the boom in recreational marijuana use began.

THE BETTMAN ARCHIVE

Under its original name, *Cannabis sativa,* "cultivated hemp" —the name by which it has always been (and properly ought still to be) known throughout the English speaking world—it was arguably the major agricultural product of the American colonies from the beginning of the seventeenth century to the Revolution at the end of the eighteenth. So important a product was hemp that the Commonwealth of Virginia enacted legislation in 1762 imposing penalties on anyone who did *not* cultivate it. It remained important for more than 150 years after the Revolution too—all the way into the late 1930s, when, in the year which saw passage of the first federal anti-marijuana law, there were still 10,000 U.S. acres under commercial cultivation in hemp.

Hemp was so important a crop because, like fairy fruit, it was useful for a number of purposes. The Dorimarites used fairy fruit as a religious sacrament and as a fertilizer; the American colonists used hemp as a source of fiber from which they could weave exceptionally long wearing cloth of whatever degree of fineness they desired, anything from burlap to fine linen, and from which they could twist rope of exceptional strength and durability. Most seventeenth and eighteenth century Americans wore clothing of hempen fabric all their lives long. The rope that rigged the ships that made possible their colonization—and the international trade that sustained it—was made from hemp, as was the rude cloth which covered the westward moving wagons of the first American pioneers.

And the descendants of those pioneers found even more uses for the versatile hemp plant. Nineteenth century Americans used hemp fiber to make cloth and rope as their ancestors had, but they also used it to make durable, long-lasting paper, most notably for bibles and for paper currency. They used hemp seed as feed for birds, having discovered that it contains various important nutrients and can improve both the plumage and the singing of many songbirds. They burned hempseed oil in their lamps and used it also to manufacture soap and furniture polish and quick-drying paints and wood stains. They even took what little remained of the plant's stalk and branches after all the fiber had been extracted and used it for fishbait and, like fairy fruit, as fertilizer.

Most important of all, however, were the uses nineteenth century American physicians found for the leaves and flowering tops of the hemp plant—the parts which, today, after they have been dried and crumbled into a smoking mixture, we call "marijuana" (though they didn't so much "find" a number of these new medical uses, really, as enthusiastically embrace them and follow them up, after others, notably in India and England, had "found" them). "The *United States Pharmacopeia,*" writes Edward Brecher in *Licit and Illicit Drugs* (Little, Brown, 1972), "which through the generations has maintained a highly selective listing of the country's most widely accepted drugs, admitted marijuana as a recognized medicine in 1850 under the name *Extractum Cannabis* or Extract of Hemp, and listed it until 1942." Among the disorders for which it was commonly recommended (and later prescribed) were "neuralgia, gout, rheumatism, tetanus, hydrophobia, epidemic cholera, convulsions, chorea, hysteria, mental depression, delirium tremens, insanity [!] and uterine hemorrhage." (*United States Dispensatory,* 1851, pp. 310-311)

"To meet the substantial nineteenth—and early twentieth —century medical demand for marijuana," writes Brecher (p. 406), "fluid extracts were marketed by Parke-Davis,

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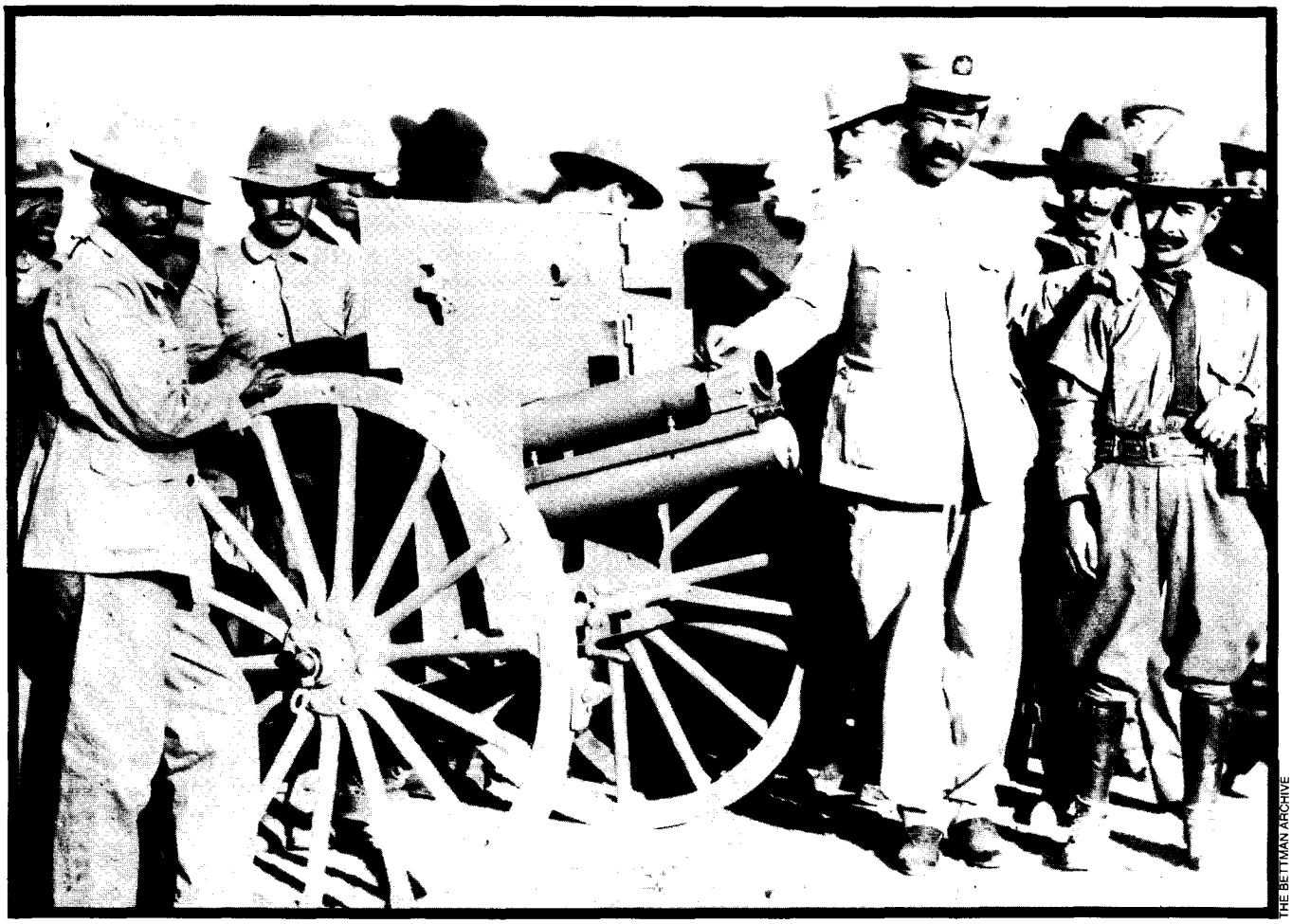

THE BETTMAN ARCHIVE

Pancho Villa (in the light suit) with some of his colleagues and followers who helped give marijuana a bad name during the Mexican Revolution. Villa's troops smoked pot constantly, and sang about it as they conducted their famous border raids.

Squibb, Lilly, Burroughs Wellcome, and other leading firms, and were sold over the counter by drugstores at modest prices. Grimault and Sons actually marketed ready-made marijuana cigarettes for use as an asthma remedy."

All this, of course, has long been forgotten—just as the truth about fairy fruit was forgotten in Dorimare. The Dorimarites had their ancient tapestries and painted ceilings and bas-reliefs to remind them of the lost glory of fairy fruit, yet they forgot. Americans have a plenitude of exactly similar reminders—in Kentucky, where hemp farming used to be the principal industry, there are public buildings decorated with stone carvings of marijuana leaves, and the Second National Bank in Lexington is decorated with a large hempfield mural behind the tellers' cages—yet they too have forgotten.

And as in the case of fairy fruit, this collective amnesia first took hold of the populace during the heat of a patriotic campaign against the despised people of a neighboring country. For the populace of Dorimare, the neighboring country was Fairyland. For the populace of the United States, it was Mexico.

Look as one might through history, it is difficult to find a time when Mexicans were not *personae non gratae* in the United States. For nearly three decades after the Republic of Mexico became independent of Spanish rule in 1821, the U.S. government refused to recognize its existence—just as the magistrates of Dorimare refused to acknowledge the existence of Fairyland. At the midpoint in this period, circa 1836, the Americans helped engineer the "revolution" which created the Republic of Texas and cut the Republic of Mexico back to about two-thirds of its former size. At the end of the period, 1848-1851, they annexed the Republic of Texas and waged war on the Republic of Mexico to make possible the further annexation of California, Nevada, Utah, New Mexico, and parts of Wyoming, Colorado, Kansas, Oklahoma, Texas and Arizona. The Mexican War of 1846-1848 was the United States's first war of imperial conquest—her first effort to mimic the foreign policy of the European nation-states to which she had always claimed to represent an alternative—and it was highly controversial even while it was fought. Thoreau went to jail rather than pay taxes to support it, and in his famous essay on "Civil Disobedience" (1849), disassociated himself with the U.S. government on account of it. "How does it become a man to behave toward this American government today?" he asked. "I answer, that he cannot without disgrace be associated with it."

The war cut Mexico in half, with the richer half, the half which included California, where gold had already been discovered and farmland was more plentiful and more productive than anywhere else in North America, going to the United States. Little wonder then that Mexico found it necessary only five years after the war had been settled to raise funds by "selling" another thirty thousand square miles of territory to the United States under the terms of the Gadsden Purchase. And little wonder that the Mexicans who lived, and in many cases had lived for generations in the North American Southwest, came within a mat-

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ter of a few years to feel (or rather, to be made to feel) like outsiders, members of a despised minority, in what had been their own country. *Norteamericanos* flooded into the newly conquered territory—especially the "Mediterranean" seacoast, gold-encrusted mountains, and fertile inland valleys of California—and quickly overwhelmed the comparatively meager numbers of the Mexicans. And thereafter, in states like California and Arizona and Colorado and Texas, words which denoted Mexicans, words like "spic" and "wetback" and "beaner," were used only to express the profoundest contempt—just as, in Dorimare, "the greatest insult one Dorimarite could hurl at another was to call him 'Son of a Fairy.'"

Among the alien customs which made the newly conquered Mexicans seem so contemptible (and which also tainted those of their countrymen who moved into the area from south of the new border during the next two decades to help the Chinese and the Irish do the manual labor of the United States's feverish westward expansion) was marijuana smoking. But the people of the Southwest saw no need at first to pass laws restricting marijuana smoking itself. It was a disgusting and dangerous habit, of course, but it was confined to the despised Mexicans who were no longer, by comparison with their conquerors, very numerous, and whom no one of any breeding or self-respect ever associated with anyway. Moreover, some of the conquerors, those who had lived previously in Southern states like Kentucky, had encountered marijuana use before—among the black slaves who worked the hemp fields and who were occasionally seen taking breaks from their work, during which they loaded their pipes with dried flowering tops of the plants and smoked them—and these observers had some reason to believe that, revolting as it undeniably was, hemp smoking probably wasn't really all that dangerous. The slaves had been doing it for years, hadn't they? They even gave it to their children, some said. And it hadn't done *them* any harm, had it?

In fact, they had been doing it in Africa for centuries, using marijuana as a religious sacrament, as an intoxicant, and as a folk medicine—just as, in Western society, we have traditionally used wine. Most commonly, the Africans smoked their hemp exactly as we do today (they are the inventors, in fact, of a device called the water pipe, which is still among the most popular instruments for smoking marijuana), though they also used it as an ingredient in foods and beverages just as the Hindus and Moslems had done before them. As slaves to the sixteenth and seventeenth century Spanish and Portuguese invaders of the New World, the Africans introduced marijuana smoking to Brazil, Colombia and the Caribbean islands and raised it to a previously unknown popularity in Mexico, where it had been practiced by the Indians since the days (1480-1520) of the Aztec ruler Montezuma II, if not before.

There is some evidence of marijuana smoking from precolonial times among certain North American Indians of the Mississippi Valley as well, and some European-American pioneers doubtless first encountered the practice in their dealings with the Indians they found on the sites of their first settlements in the wilderness that was seventeenth century Ohio and Southern Illinois. But hemp smoking among Indians never provoked full scale political retaliation from the European-American colonists, just as hemp smoking among slaves never provoked it from the white Southerners who owned the Kentucky hemp plantations, and just as hemp smoking among Mexican-Americans didn't provoke it from their more numerous "white" neighbors—at first. Indians, Negroes and Mexicans weren't important enough to merit political action on their account. Not only were they inherently unimportant—inferior, little better than animals, really—but they were also unimportant numerically. They were too few to matter. As the respectable citizens of Dorimare ignored the vice of fairy fruit-eating while it was only "practised in low taverns by disreputable and insignificant people, such as indigo sailors and pigmy Norsemen," so the respectable citizens of the United States ignored the vice of marijuana-smoking while it was only practiced in Indian villages and slaves' quarters and barrios by disreputable and insignificant people, such as Indians and Negroes and Mexicans.

The problem was, the Negroes and the Mexicans wouldn't stay insignificant. After the slaves were freed and it was no longer possible to control the movements of the Negroes, many of them began leaving the plantations and moving into the cities, taking their marijuana habits with them and also alarming their new neighbors by choosing to live close to one another and settling into neighborhoods in larger concentrations of their kind than most urban Americans had ever seen before. Mexicans, meanwhile, were coming in from Texas, New Mexico, Arizona, and Southern California to take the jobs the blacks had left behind in the rural areas of the South and the jobs the Chinese could no longer fill (after passage of the 1875 Federal prohibition of imported Chinese contract labor, which greatly discouraged further Chinese

Blacks brought hemp-smoking to the New World from Africa 400 years ago, but as long as their relations with whites were strictly controlled by slavery, the practice was ignored.

THE BETTMAN ARCHIVE

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THE BETTMAN ARCHIVE

Some North American Indian tribes used the cannabis plant for fiber as long ago as the first few centuries A.D., *and smoked it in their pipes as recently as the nineteenth century.*

immigration, and the 1882 Chinese Exclusion Act, which ended it) in the West. And these Mexican newcomers brought the vice of marijuana smoking with *them* too. What was worse, the years that followed saw the administration of Porfirio Diaz (who, as the first of the many military dictators propped up by the U.S. government in Latin American countries, ruled Mexico almost continuously from 1876 to 1910) make life so unendurable for so many Mexicans that more and more of them with every passing year chose to enter the United States, bringing their marijuana with them.

With 1910 came the Mexican Revolution, a revolution which raged more or less continuously for most of the next ten years and left the surrounding countryside desolate and barely inhabitable: crops and buildings burned, animals slaughtered, dispossessed peasants left to wander without either means or prospects of survival. And still the land reform which the Revolution had promised was nowhere to be seen. "Reaction against the Revolution grew in the countryside," write Paul R. Ehrlich, Loy Bilderback and Anne H. Ehrlich in *The Golden Door: International Migration, Mexico, and The United States* (Ballantine Books, 1979), "and many *peones* ... began looking north for refuge and employment. This was the beginning of Mexican migration to the United States." From 1911 through 1917, 120,000 Mexicans entered this country. From 1917 to 1924, that number grew to more than 300,000.

And by 1924, of course, the Great Drought was upon us—the great drought called Prohibition. "It was a change in the laws rather than a change in the drug or in human nature," writes Edward Brecher, "that stimulated the large-scale marketing of marijuana for recreational use in the United States. Not until the Eighteenth Amendment and the Volstead Act of 1920 raised the price of alcoholic beverages and made them less convenient to secure and inferior in quality did a substantial commercial trade in marijuana for recreational use spring up.

"Evidence for such a trade comes from New York City, where marijuana 'tea pads' were established about 1920. They resembled opium dens or speakeasies except that prices were very low; a man could get high for a quarter on marijuana smoked in the pad, or for even less if he bought the marijuana at the door and took it away to smoke. Most of the marijuana, it was said, was harvested from supplies growing wild on Staten Island or in New Jersey and other nearby states; marijuana and hashish imported from North Africa were more potent and cost more. These tea pads were tolerated by the city, much as alcohol speakeasies were tolerated. By the 1930s there were said to be 500 of them in New York City alone." (p. 410)

In the Southern and Southwestern states, of course, where the black and Hispanic populations were even more numerous, marijuana use became even more common. And so it was that the first "epidemics" of marijuana smoking in the United States (and the first state laws prohibiting it) broke out during the 1920s in places like New Orleans and Austin and Denver—just as the first epidemics of fairy fruit-eating in Dorimare (and the first laws prohibiting it) broke out in the country districts along the border with Fairyland.

And as the magistrates of Dorimare moved against the fairy fruit menace by "inventing a legal fiction that turned fairy fruit into a form of woven silk and, hence, contraband in Dorimare," so the legislators of the United States moved against the marijuana menace by inventing a legal fiction that turned marijuana into a narcotic drug and, hence, contraband in the United States. By the time the first federal anti-marijuana law was passed by Congress in 1937, 46 of the 48 states and the District of Columbia had already outlawed the "weed with roots in hell," as it was called in a memorable mid-'30s media fear campaign. This campaign, one of the most important events in the history of marijuana in America, seems to have been strongly and directly influenced, if not actually launched and directed, by Harry J. Anslinger, the former Prohibition agent who in 1930 had become the first Commissioner of the new Federal Bureau of Narcotics.

It has often been suggested that Anslinger's enthusiasm for a federal law prohibiting marijuana use (an enthusiasm which first surfaced in 1932) was born of his desire to make sure he and his fellow former Prohibition agents would still be able to find work after Repeal came in 1933. It has been suggested that certain powerful figures in the newly-reestablished liquor industry worked behind the scenes for federal marijuana prohibition in order to eliminate competition from a rival drug which was rapidly growing in popularity; it is certain that the liquor industry testified on Capitol Hill in 1937 in support of the Marihuana Tax Act and otherwise lent its influence to the anti-marijuana movement. And while it is doubtless true that a spirit of bureaucratic self-preservation among Prohibition and narcotics agents and a spirit of monopolistic protectionism among liquor manufacturers were among the factors which led to national prohibition of marijuana, it seems clear from the record that the major factor was a widespread racist fear of Spanish-speaking immigrants.

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No real effort was made at the time to conceal this fact. A group called the American Coalition, which advocated strict bars on Latin American immigration so that mixture with an "inferior race" would not lead the white American majority down the road to "race suicide," was among the loudest and most enthusiastic of the handful of genuinely influential organizations which favored national marijuana prohibition in the '30s. An American Coalition spokesman told the *New York Times* in 1935 that "marihuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration." Commissioner Anslinger of the Federal Bureau of Narcotics took a very similar position in his 1937 testimony before Congress on the need for prohibition of the weed. In evidence he submitted a letter from the civic-minded editor of the *Daily Courier* in Alamosa, Colorado, a city which had lately been on the receiving end of a good deal of this "unrestricted Mexican immigration." The editor solicited federal assistance in local efforts to stamp out marijuana abuse, which, he said, had become so menacing that it beggared his powers of description. "I wish I could show you what a small marihuana cigarette can do to one of our degenerate Spanish speaking residents," he wrote. "That's why our problem is so great; the greatest percentage of our population is composed of Spanish speaking persons, most of whom are low mentally, because of social and racial conditions." Harry Anslinger didn't need to be shown, of course. He already knew about the degeneracy of Latin Americans. In a magazine article only a few years before, he had himself written about dope smugglers' "vessels sailing from filthy Central American and West Indian ports, having the lowest scum of the earth as members of the crew," and about how these crew members come ashore in this country bringing dangerous drugs and also "contaminating the people of the shores with whom they mingle with contagious and loathsome diseases."

If it seems preposterous to us that Americans of less than half a century ago should have taken such claptrap seriously, we have only to reflect that scarcely twenty years before that, Professor Lewis Terman of Stanford University, whom Ehrlich, Bilderback and Ehrlich rightly describe as "one of the most eminent psychologists of the day," had announced "that Mexicans were an inferior race, and that the inferiority was genetic and not correctable by education. Terman was upset by the reluctance of society to stop such people from breeding since their children would be '... uneducable beyond the merest rudiments of training. No amount of school instruction will ever make them intelligent voters or capable citizens...'." (*The Golden Door*, pp. 220-221)

Two decades later American society was still reluctant to impose forcible sterilization on the Mexicans, but relations hadn't really warmed up; in fact, they'd deteriorated. The Great Depression made jobs scarce for everyone; and Mexicans who had flocked into cities like Tucson and San Diego to fill jobs no one else wanted suddenly found themselves a resented surplus in a market from which demand for labor of any kind seemed to have almost entirely disappeared. Americans who had only hated Mexicans in the 'teens and 'twenties decided in the 'thirties that their continued presence in this country could not be tolerated and that they must therefore be induced to "go back where they came from."

There was no legal (much less constitutional) basis for a mass deportation, however; the desired exodus would have to be voluntary. Accordingly, the Americans passed laws paying the travel expenses to Mexico of any Mexicans who wanted to return there. Then they passed other laws designed to make the lives of the Mexicans here even more miserable. Chief among these latter laws were the new laws against marijuana smoking. Already impoverished and malnourished by months of unemployment, already fearful and abject from months of enduring the newly virulent hatred and occasional violence directed at them by the white majority, the Mexicans were now expected to endure police harassment and possible imprisonment for smoking marijuana—something which many of them had done for generations and which played the same role in their lives which coffee, tea, tobacco and alcoholic beverages played in the lives of their oppressors. Of course, they were always free to pack up and leave and go live with their own kind in some other country where their habits weren't against the law of the land....

The flower children who made marijuana a household word during the 1960s are now wondering how they'll deal with it when their *children want to start smoking — if they haven't started already. And the $500 million drug paraphernalia industry is doing brisk business in over 15,000 "head shops" nationwide.*

The strategy was a time-honored one. It had, in fact, been invoked more than a half-century earlier when the very first drug laws in American history were passed in San Francisco. By the late 1870s, the people of that city had begun to hate and fear the Chinese who seemed to become more numerous every day and who were widely believed to compete "unfairly" (that is to say, with too much success) for jobs with whites. To discourage further Chinese immigration to San Francisco and encourage those Chinese already there to consider moving elsewhere, the city simultaneously outlawed the carrying of baskets suspended from poles across the shoulders (which was how Chinese laundrymen transported dirty clothes), the wearing of pigtails by men, and the smoking of opium.

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TIM HARMON

ROBERT L. SHELLEY

Could the 19th century San Franciscans (and their comrades in spirit throughout the rest of the country who joined anti-opium movements in the next two decades) have acted, not from bigotry, but from the conviction that opium was dangerous? No. Such a hypothesis runs into a number of difficulties, not the least of which is the fact that many of the early anti-opium laws in this country (including the Federal statutes of 1887 and 1890) prohibited the substance *only for the Chinese,* leaving it freely available to everyone else.

Similarly, there is little evidence to suggest that most Depression and World War II-era Americans really believed marijuana itself (as opposed to the Mexicans who smoked it) was dangerous. They were *told* that it was dangerous by the more sensational newspapers and magazines, but they were also told by other organizations, including ones as respectably influential as the American Medical Association, to disregard all this yellow journalism and relax—there was no marijuana menace. Moreover, they somehow found it possible to forget all the "reefer madness" nonsense entirely for a few years (1942-1945) when the Japanese occupation of the Philippines cut off the supplies of manila which the U.S. had been using instead of hemp to make rope—a vital war effort commodity. At this point, writes Pamela Lloyd in a recent issue of *High Times,* "... hemp became a strategic war crop, and the Department of Agriculture advised farmers in Minnesota, Iowa, Wisconsin, Illinois, Indiana and Kentucky that by growing hemp they could 'serve their country,' 'have good prospects of profit for themselves' and avoid the draft as a fringe benefit. In fact, Fred E. Coulter of Grundy County, Iowa, said he made 'more money than has ever been made before on an equal number of acres of land in Grundy County in one year' when the government paid him nearly $20,000 for his 270-acre 1944 hemp crop.

"While a few years earlier the government had reviled marijuana as the 'assassin of youth,' it now encouraged 4-H clubs to grow the 'demoralising dope.' And in 1943 the University of Kentucky College of Agriculture Extension Service obligingly published leaflet number 25, *Hemp Seed Project for 4-H Clubs,* encouraging youngsters to grow hemp and telling them how to do it. 'Uncle Sam has asked Kentucky to produce ... the hemp seed for the nation,' it began. 'Growing hemp gives 4-H Club members a real opportunity to serve their country during wartime. It requires a small amount of fertile land and little or no special machinery; labor requirements do not interfere with school work.... Grow at least half an acre; one to two acres would be better.'" (*High Times,* March 1980, p. 71)

These same years saw publication and wide discussion of two authoritative reports which debunked the "reefer madness" concept of marijuana: "The Marihuana Bugaboo" (1943) by Colonel J. M. Phalen, editor of the *Military Surgeon,* and *The Marihuana Problem in the City of New York* (1944), the famous LaGuardia committee report. Yet war's end saw no change in public marijuana policy. The newly recreated hemp industry disappeared as fast as it had appeared, and prohibition continued.

Prohibition doesn't work, however, either in Dorimare or in the United States. The prohibited substance, whether fairy fruit or marijuana, merely goes underground, onto the black market, where it goes right on finding new customers and winning new popularity until one day, perhaps, it re-emerges into the respectable, above-ground world, still an outlaw but also the latest fashion. A generation after the Great Drought, when the magistrates of Dorimare first placed a national ban on fairy fruit, the vice of fairy fruit-eating popped up again as the newest craze among the well brought up children (including even the mayor's son) of the leading citizens of Lud-in-the-Mist — just as, a generation after the Great Depression, when the legislators of the United States first imposed a nationwide ban on marijuana, the vice of dope-

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smoking popped up again as the newest craze among the well brought up children (including more than a few mayors' sons) of the leading citizens of virtually all the major cities in the U.S. In Dorimare, one of the worst outbreaks occurred at a fashionable school, Miss Primrose Crabapple's Academy for young ladies, where an unscrupulous physician named Endymion Leer gave fairy fruit to the students and a good many of them forthwith ran away from home and headed West toward Fairyland and, presumably, a new way of life. In the United States, as we know, one of the worst outbreaks of the new epidemic of marijuana use occurred at a fashionable school, Harvard College by name, where an unscrupulous psychologist named Timothy Leary gave marijuana and LSD to the students and a good many of them forthwith left their homes and headed West toward California and a new way of life called the counterculture.

These flower children are now in their 30s, of course, and a great many of them are still smoking dope. Not a few of them have *kids* who are smoking dope, and many more have recently begun worrying about smoking in front of the kids and about how they'll handle it when the kids want to start smoking. Meanwhile, as their generation has gradually, inexorably, come to hold a position of influence and leadership in society at large, their values have infiltrated society at large, and marijuana use has come from the depths of disrepute to the very threshold of respectability. One American in ten (in California, it's one adult in four) is a regular user of the devil weed, which means that what used to be called "marihuana addicts" are now about as numerous as joggers, homosexuals, and the left-handed. One American in three has tried the stuff. And in cities like New York, Los Angeles and San Francisco it is now common to see it smoked publicly—especially in hotels, restaurants, theaters, and parks.

Yet it remains an illegal drug. Nearly half a million Americans learn this the hard way every year by "being busted" on marijuana charges. More than three million Americans have been busted for marijuana in the past seven years, nearly 90 percent of them for possession of an ounce or less. Not all three million went to jail, of course, but even the luckiest of them was subjected to the indignity and humiliation of arrest and arraignment, and to the cost—seldom less than $1,000—of hiring an attorney and arranging to qualify for "diversion" from the prison system to a tax-supported "drug rehabilitation" program. And some *do* go to prison. There are approximately 6,000 people incarcerated in federal institutions alone today for offenses involving marijuana and other illicit drugs. This is almost 25 percent of the total federal prison population. Among them are such prisoners as Jerry Mitchell of West Plains, Missouri, who was sentenced in 1975 at the age of nineteen to twelve years in the state penitentiary for the "crime" of selling $5 worth of marijuana to an undercover cop (the sentence was later reduced to seven years). The judge in his case commented about Mitchell—a college freshman with an excellent scholastic record and no previous record of trouble with the law—that "most crimes are one on one, one person robbing, killing or assaulting another...a pusher has the means to poison the whole community."

Libertarians, of course, decry the injustice of cases like Mitchell's—and the injustice of the laws that make them possible. But their calls for abolition of these laws are too often perfunctory and half-hearted, as though they can't really summon much more than an academic or theoretical interest in the matter. "It's true," they seem to say, "that government has no right to regulate or prohibit any peaceable behavior, however deviant or personally debilitating it may be. People have a right to harm themselves, even destroy themselves. They have a right to be different. But the laws against marijuana only hurt a few people, the people who want to lead the particular lifestyle they prohibit. And in most cases, the laws don't actually make this lifestyle unachievable for them, only more expensive. This doesn't make it all right, of course; it's all wrong. But it's only common sense to worry about abolishing the marijuana laws *after* you've done what you can about the problems that hurt everybody—after you've cut taxes, deregulated business, trimmed the bloated "defense" establishment, and stopped inflation. Marijuana reform is just a lower priority issue, right?"

GLOBE PHOTOS

Florida's new "anti-paraphernalia" law, which was based on a model designed by the DEA, makes possession of rolling papers punishable by a year in jail and a $1000 fine.

Wrong. Marijuana reform should be a *very high* priority issue for libertarians for precisely the reason that, like inflation, like souped-up "defense" spending and the risky, interventionist foreign policy adventures it subsidizes, like the stifling government regulations that keep the economy down by keeping small business down, and like the no-longer-bearable tax burden which now keeps us all working until early summer each year earning the tithe we owe our freely elected masters, prohibition of marijuana is a public policy which hurts *everyone*.

How? Let me count the ways. First, there's the direct cost to the taxpayer of paying the salaries of all the cops and bureaucrats and lawyers and doctors and drug abuse coun-

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sellors who work full time at the business of harassing marijuana users, and the cost of housing and equipping all these people, and the cost of housing and feeding the marijuana users they decide to lock up in prisons for their "crimes." The annual cost of this taxpayer-supported Marijuana Abuse Industrial Complex is variously estimated from around $600 million to more than $1 billion dollars. And aren't we all looking for places to cut the budgets of our local, state and federal governments, so we can once again have enough after-tax income to live?

Then there are all the indirect costs which any government interference in market processes invariably imposes on all the buyers and sellers in the affected marketplace. Libertarians (and even conservatives) know all about these costs and talk about them incessantly when they discuss the depressing effect government regulation of business has on the economy, but they almost never bring them up in connection with marijuana. Are they unaware that marijuana is a business too? It's quite a big one, in fact. According to the DEA, it's the number one business of any kind in Colombia (where it passed coffee years ago) and in Hawaii (where it has also passed sugar, pineapple and coconut); the number one agricultural business in California (where it has only recently passed grapes); and, according to government figures, the number three business of any kind in the United States (right behind General Motors and Exxon, just ahead of Mobil, Texaco, Standard Oil of California, IBM, Gulf, General Electric and Chrysler). If government were trying to put Mobil or Texaco out of business, if it were using special herbicides and federally financed paramilitary outfits to burn and destroy the California grape crop or the Hawaii pineapple crop, you can bet there'd be plenty of outraged protest—and not only on the grounds that government was violating the civil liberties of the businessmen and farmers involved, either. In fact, it's likely that the civil liberties-freedom of lifestyle argument wouldn't even come up in such a context. The outraged protesters would be shouting instead that this insane attempt to put an entire industry out of business was going to put thousands upon thousands of people out of work and have a depressive effect on the entire economy, all because of somebody's irrational prejudice. Where are such protesters among libertarian advocates of legal marijuana?

And all this only scratches the surface. Suppose that in addition to attempting the suppression of the grape trade, the government attempted also to stamp out the wineglass industry and the decanter industry? It is doing the equivalent today when it attempts to stamp out not only the marijuana industry but also the paraphernalia industry which thrives upon its success. The government estimates that manufacturers, wholesalers, and retailers of bongs, water pipes, rolling papers, smoking stones, and roach clips did about half a billion dollars worth of business last year. The paraphernalia industry is now big enough that it has two competing trade magazines serving it, employs thousands of people, and provides the merchandise to stock more than 15,000 "head" shops all over the country. In the last year and a half, at least twelve state governments and hundreds of counties, cities and towns in 43 states have enacted laws designed to put these head shops, and the multi-million dollar business that supplies them, out of business. Most of the laws are patterned on a "Model Drug Paraphernalia Act"

Enough people were arrested for marijuana last year to empty the whole city of Nashville, Tennessee.
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drafted last year and now being peddled by the DEA. Many of the local ordinances and statutes have been struck down as unconstitutionally vague in their definition of what constitutes paraphernalia. But a great many remain in effect. And new ones join them almost weekly. Yet where are the defenders of free enterprise to protest this bigoted holy war against an entire industry?

It is worth noting in this connection that those who are waging it do not mean for their war to stop with the destruction of the paraphernalia trade. One of the loudest and least euphemistic of its generals, Dr. Mitchell S. Rosenthal of the privately funded drug abuse treatment program Phoenix House, told the House Select Committee on Narcotics Abuse and Control last November, "I do not believe we can guarantee press freedom to publications that proselytize for drugs." Also testifying before the committee was a spokesperson for a DeKalb County, Georgia parents group called Families in Action who demanded a full, federal criminal investigation of *High Times,* the marijuana world's largest and most influential magazine. In late May, a bill was still under consideration in the California legislature which would ban sale of *High Times* in the nation's most populous state. Yet where are the defenders of freedom of the press, libertarian or otherwise, to decry *this* inevitable consequence of our marijuana prohibition?

But let us not leave our previous topic, of how that prohibition victimizes all of us through its economic consequences, until we have at least briefly considered the hypothetical benefits of a free market in hemp which it now denies us. As has been noted, hemp fiber was once extensively used as a raw material, especially for the manufacture of cloth and paper. This situation changed gradually over the course of the nineteenth century as the result of a series of major technological advances, the invention of the cotton gin and of other labor-saving cotton and wool machinery, the development of synthetic fibers, and the development of a chemical wood pulping process for papermakers being chief among them. None of these advances killed the hemp fiber industry entirely, mind you, but only reduced its share of the market. Certain other advances, including periodic improvements in the performance and efficiency of the machine hemp brake, which separated the fiber from the rest of the plant, even helped to keep hemp competitive—if somewhat lamely by comparison with the days when it had dominated the textile market. And a great many American hemp farmers were anticipating a massive new increase in demand for their produce as late as the mid-1930s because of the then-recent perfection of a machine-operated "hemp decorticator" which would make the plant much more competitive with wood as a source of fiber for paper. Paper companies in Minnesota and Illinois had already begun manufacture of hemp paper when nationwide prohibition of marijuana nipped their new growth spurt in the bud.

Today, almost half a century later, wood is even less competitive with hemp as a source of paper—or would be, if commercial cultivation of the hemp plant weren't illegal. The unending forests which made wood so cheap and abundant a material a hundred years ago have largely disappeared. It can take 25 to 50 years or more for a new crop of trees to replace the ones you've cut down, and if you spend that 50 years continuously cutting down more trees, the day will inevitably come when you have to find another source of fiber or start paying higher prices for your wood. That time has now come. The paper industry can no longer find sufficient numbers of affordable trees to produce the pulp it needs to supply our nation's insatiable and growing demand for paper. The industry is buying more and more pulp abroad, which is driving up the cost of paper but is still not meeting the demand. Both the *New York Times* and the *Wall Street Journal* have complained publicly in the past few months that they are unable to find adequate supplies of newsprint to assure continued publication. And almost every other publisher has a similar story to tell. The biggest factor in the mammoth increases we have all noticed in the past decade in the retail prices of books, magazines, and newspapers is the skyrocketing cost and unsteady availability of paper.

What makes matters worse for the paper manufacturers is that further pressure is being put on the forest products industry by other large-scale users of wood, like the construction industry and the energy industry. And this competition for an already scarce (and growing scarcer) product drives prices up even more—in all three industries. According to the National Association of Homebuilders, wood prices have gone up so far that lumber now accounts for an unprecedented 15 percent of the total cost of building a new single family dwelling. And the new high cost of firewood, yet another consequence of the shrinking supply of and growing demand for trees, is wreaking the same kind of havoc in one small but significant sector of the energy industry which is being wrought in society at large by increasing oil prices. According to the Department of Energy, wood currently supplies about 2.5 percent of total U.S. energy consumption—about half what we get from nuclear power. Most of this is for home heating, but some is industrial: pulp and paper mills, for example, derive nearly 50 percent of their operating power from burning scrap wood. In theory, according to the DOE, wood could supply 10 percent of our national energy needs, if there were enough of it. There isn't, however, because too many other people want it for too many other uses (and because it takes 25 to 50 years or more for a tree to grow back after you've cut it down, so that the faster we cut, the faster we run out). Even so, the demand for wood as fuel is growing. Scarce as it's becoming, it looks good next to the fast-developing, government-exacerbated shortage of affordable oil.

That shortage, which has led to higher prices for gasoline, motor oil, diesel fuel, and a number of other products which everybody knows are made from petroleum, has also led to higher prices for such synthetic fibers as dacron, rayon, and polyester. *They* are *also* made from petroleum. The *Los Angeles Times* reported early in May that these higher prices for synthetics had led to a short-lived boom in cotton—a boom which had fizzled when the would-be investors had learned about the amount they'd have to spend on petroleum products, especially fuel for machines, and synthetic fertilizers and insecticides, in order to bring a cotton crop to harvest.

Hemp cultivation does not require such expenditures. Hemp will grow in more varied soils and climatic conditions than either cotton or trees. It provides a new, fully mature crop every few months. It provides as much fiber to paper manufacturers for every cultivated acre as four acres of woodland. It needs no synthetic fertilizers and may be harvested and prepared for use by fewer, more fuel-efficient machines than are required by cotton. If it is being raised for smoking as well as for fiber and seed, the use of synthetic pesticides to contain the few insects which bother it is specifically contra-indicated. Cloth woven from hemp fiber is nearly as durable as cotton and much less expensive. Paper made from hemp fiber is much *more* durable than wood

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pulp paper as well as being less expensive. If we used hemp in the manufacture of these products, we would not only pay less for our clothing and our linens and our books and magazines and newspapers, we would also have more wood available for use as fuel and as lumber, and more trees which could remain standing for the satisfaction of environmentalists. Moreover, we would free petroleum from certain of its present uses in the textile and agricultural industries to do more work where it is most needed—as a fuel for private and commercial vehicles and power generating equipment. Is marijuana prohibition, the public policy which forbids our doing any of this, a policy which hurts only a few potheads?

But the costs of pot prohibition are not only economic. They are medical as well. Marijuana has been proved useful as an analgesic for treatment of various kinds of pain, including the kinds associated with childbirth, menstrual cramps, and post-operative convalescence. It is also useful in the treatment of hypertension, depression, loss of appetite, convulsions, multiple sclerosis, and glaucoma, and it may be used to fight the nausea caused by chemotherapy treatment for cancer. In the past two years, nearly half of our state governments have enacted some modification in the law to permit use of marijuana in one or more of these medical contexts. But the federal government and most of the other states have refused to budge. Is the public policy which denies this helpful drug to the ill and suffering a public policy which hurts only a few potheads?

And let us not forget the costs which marijuana prohibition has imposed on our foreign policy. As we have seen, it has been bound up in foreign—especially immigration—policy since the beginning. And as the years have gone by, the binding has tightened, not loosened. It wasn't long before U.S. efforts to stamp out the trade in hemp led to U.S. efforts to stamp out the cultivation of hemp in the countries which supplied it to the American market. Hundreds of millions of dollars of U.S. foreign aid to Latin America over the past three decades have been contingent upon creation and enforcement of U.S.-style anti-marijuana laws in countries like Mexico, Panama, Cuba (under Batista), and Colombia. Some of this money has been used to arrest, jail and torture American citizens who go South for smuggling purposes—after all, why satisfy the Americans by arresting your own people for what they regard as a harmless vice, when you can satisfy the Americans by arresting *their* people instead? But not all of it has. The lion's share of it has gone to build up the police powers of the military dictatorships and oppressive "democratic republics" which the U.S. has seen fit to establish all over Latin America as a "bulwark against communism." And since the 1960s when media exposure forced CIA agents to stop training these butchers in the arts of torture and murder, DEA agents have taken over that job as well. (See Penny Lernoux, "Corrupting Colombia," *Inquiry*, September 30, 1979.) If the U.S. is hated throughout the Third World as an imperialist warmonger and a hypocritical violator of human rights, it is in part the doing of our laws prohibiting marijuana and other "dangerous drugs."

Repeal these laws we must, then—and the sooner the better. Yet, what's that I hear? A plaintive voice wondering about all those stories that've been in the papers and on radio and T.V. lately reporting on the "new evidence" of health hazards and the spread of marijuana smoking to school kids? Isn't it rather a singular omission to have devoted eight thousand words to discussing marijuana, as I just have, and never once to have raised the issue of whether a free market in hemp wouldn't destroy the health of America's youth?

Well, no, as a matter of fact, it isn't. The fact is that the "health issue" is hardly worth discussing. It's a phony, a red herring, from beginning to end. There is not now and never has been any reputable evidence to support the claim that marijuana use is harmful to the health. The regular inhalation of smoke from any burning substance is capable of causing various upper respiratory diseases, including lung cancer, but this problem is easily avoided by tens of millions of regular marijuana users in India and Asia Minor who eat the drug in cookies and sweetmeats instead of smoking it. No one has ever succeeded in establishing the likelihood of

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any other serious health problems resulting from marijuana use. And there have been many attempts. Contrary to the frequent assertion that "the evidence isn't yet all in on marijuana, it hasn't yet been studied enough to be given a clean bill of health," the evidence *is* all in. We will doubtless learn more in the future about the effects of the hemp plant upon human users, but we know all we need to know right now to say that marijuana is one of the least toxic substances known to modern medicine.

"It is often said," wrote Edward Brecher nearly a decade ago, "that little is known about the psychological and physical effects of marijuana on the human user. This is a simple error of fact. In addition to many hundreds of significant papers reporting marijuana research through the last century, an impressive series of official investigating bodies have reviewed all of the available evidence and have presented their findings at length." Brecher lists as "the most important of these official marijuana investigation reports" the following five:

1) *The Indian Hemp Drugs Commission Report* of 1894, a 3,281-page, seven-volume document, prepared in India, where marijuana use has been for centuries what coffee drinking is in the U.S., by a British commission of seven—four Englishmen and three Indians, including one rajah. They studied marijuana users who had been using from childhood and found that "small doses of hemp were beneficial," and that moderate use, "even if regular, had no significant injurious mental, physical or moral effect." (Michael R. Aldrich, "A Brief Legal History of Marihuana," Do It Now Foundation, 1971, p. 12) They concluded that "[t]otal prohibition of the cultivation of the hemp plant for narcotics, and of the manufacture, sale, or use of the drugs derived from it, is neither necessary nor expedient in consideration of their ascertained effects." (Volume I, p. 264)

2) *The Panama Canal Zone Military Investigations,* conducted by the U.S. Army from 1916 to 1929 and reported in the *Military Surgeon* in 1933. According to Lester Grinspoon (in *Marihuana Reconsidered,* Harvard University Press, 1971), the Army found it was "not possible to demonstrate any evidence of mental or physical deterioration" in users.

3) *The LaGuardia Committee Report* of 1939-1944, prepared by eight physicians, a psychologist, and four New York City health officials, at the request of New York City Mayor Fiorello LaGuardia, who wanted to get to the bottom of "The Marihuana Problem in the City of New York" (as the Committee ultimately entitled its report). The LaGuardia Committee found that "those who have been smoking marihuana for a period of years showed no mental or physical deterioration which may be attributed to the drug."

4) *The Baroness Wooton Report* of 1968 prepared by a special subcommittee of the Advisory Committee on Drug Dependence of the United Kingdom Home Office. As Brecher puts it, the report of the subcommittee "confirmed in all substantial respects the findings of the Indian Hemp Drugs Commission, the Panama Canal Zone investigations, and the LaGuardia Committee report." (p. 452)

5) *The Final Report of the Canadian Government's Le-Dain Commission,* published in 1972. The Commission found that the short-term physiological effects of marijuana smoking "are usually slight and apparently have little clinical significance," and that in the long term, "[t]he individual and social harm (including the destruction of young lives and growing disrespect for law) caused by the present use of the criminal law to attempt to suppress cannabis far outweighs any potential for harm which cannabis could conceivably possess." (Brecher, pp. 464-466)

Since Brecher wrote nearly a decade ago, three more such authoritative studies have been published: the 1972 final report of the National Commission on Marihuana and Drug Abuse (the "Shafer Commission"), nine of whose thirteen members were personally appointed by then-President Richard Nixon; the 1975 report of the Research Institute for the Study of Man on its two-year study of *Ganja in Jamaica* (as the report was entitled), undertaken in 1970 with the sponsorship of the Center for Studies of Narcotic and Drug Abuse and the National Institute of Mental Health; and the 1980 Final Report of the privately funded, Washington-based Drug Abuse Council, which spent seven years researching (as it called its 291-page Final Report) *The Facts About "Drug Abuse."*

The Shafer Commission found "that any risk of harm probably lay in the heavy, long-term use of the drug—although it lacked evidence even on this risk." (*The Facts About "Drug Abuse,"* p. 162) The Research Institute for the Study of Man found that the state of physical health of a group of average Jamaican laborers who were heavy daily smokers of marijuana (and in most cases had been since childhood) was virtually indistinguishable from the state of physical health of a control group of non-marijuana users—and, further, that such a finding was routine for studies of its type:

> Under the auspices of the University of Florida, a medical anthropological study of urban, working-class, chronic cannabis smokers has been carried out in Costa Rica. Again, as in Jamaica, ... [n]o evidence of pathology could be found after extensive medical examination. The results of psychological and brain function tests indicated that "chronic marihuana use is not associated with permanent or irreversible impairment in higher brain functions or intelligence." The Costa Rica project also included the examination of testosterone levels and immunology as related to cannabis use, areas of research not undertaken in the Jamaica study. No relationship between marihuana use and testosterone levels was found nor were there indications of impaired immunological response. Significantly, the study established that the use of cannabis did not impair the subject's ability to function well at home or at work and no evidence was found to support the hypothesis that heavy cannabis use precipitates an "amotivational syndrome." As in Jamaica, marihuana is utilized in Costa Rica to cope with the exigencies of daily life, not to withdraw from society. Another intensive study, clinical in orientation, was conducted by a multidisciplinary team at the University of Athens. The results of this research on Athenian workers confirm both the Costa Rican and Jamaican findings on all comparable variables.

The Drug Abuse Council found that "marijuana use in moderate amounts over a short term poses far less of a threat to an individual's health than does indiscriminate use of alcohol and tobacco," and went on to comment:

> Millions of dollars have been invested by public and private sources to determine what effects marijuana might be having on the growing number of users; since 1972 the U.S. government alone has given over $25 million in grants for research on marijuana. The National Institute on Drug Abuse (NIDA), the federal watchdog agency on drug use and misuse, has issued six reports to Congress since 1971 summarizing the hundreds of research reports which have been published during that period. It is significant that research reports by NIDA have not concluded that marijuana poses a major public health hazard, though NIDA has specifically stated that it feels a duty to call public attention to certain potentially adverse consequences of its continued use. It is also significant that now NIDA is required to produce a marijuana report only every other year instead of annually, which indicates that extreme concern over marijuana use may be receding. (*The Facts About "Drug*

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Abuse," p. 165]

Yet it is not receding everywhere at once, and in some places it is advancing. "A vociferous new anti-marijuana crusade," *Newsweek* reported in January, "is forming up [sic] around the country, spurred by alarmed parent groups and drug authorities." "During the last few years," the *New York Times* reported in February, "hundreds of ... antipot parents' organizations have sprung up, unheralded, around the nation." "The first nationwide network of parent groups opposed to drugs has been formed," the *Los Angeles Times* reported in May, "... to inform and educate parents, adolescents and children and others about the dangers of marijuana and other mind altering drugs," and to "fight efforts to remove criminal penalties for marijuana offenses."

Why are all these parents up in arms? What has given rise to this new national movement? "At its core," says *Newsweek,* "is a genuine concern, based on disturbing new findings." "The recent and dramatic increase in public awareness of the ill effects of heavy smoking on children's minds and bodies," says the *New York Times,* "has added fuel to the anti-pot fire." And the *Los Angeles Times* quotes "a spokesman for the National Institute on Drug Abuse" as declaring that parents are mobilizing because they "are quite convinced that marijuana is a harmful and unsafe drug and is particularly dangerous when used by children."

And where are these "disturbing new findings" which prove "the ill effects of heavy smoking on children's minds and bodies"? They are, say the parents' groups, in the newest NIDA report on marijuana, which was published last year and widely publicized in January when its findings were presented before U.S. Senate hearings. Yet there is nothing new in this report (except, here and there, a new low in scientific method, as when U.S. Army doctors report that heavy marijuana users develop abnormal cells in their lungs, basing this conclusion on their study of a group of smokers, almost all of whom were also heavy cigarette smokers!). For the most part, the report merely rehearses the most recent medical findings and fairly bends over backward to avoid overgeneralizing from them. "Throughout the drug institute's report on human effects," wrote the *New York Times*'s Harold M. Schmeck, Jr. on the occasion of its original publication, "the words 'contradictory,' 'uncertain,' 'unevaluated,' and 'unconfirmed,' run like a minor theme. 'A continuing problem throughout the past decade has been the tendency to overinterpret preliminary research findings,' said the report." Schmeck himself cautioned against a related problem. "The very fact," he wrote, "that a long list of *possible* effects of marijuana on the body can be drawn may distort public perception of the facts by implying that there is *in fact* damage to all these vital systems." (*New York Times,* October 19,1979, emphasis added)

The new NIDA report *does* contain one new fact, however: the fact that the number of school-age daily marijuana smokers has doubled in the last five years. As we have seen, this is not in itself necessarily a cause for alarm—at least about the health of our children. (It might well be cause for alarm, on the other hand, about the state of a public school system whose charges find it tolerable only when they're stoned.) As we have seen, lifelong heavy smokers of marijuana in India, Jamaica, Costa Rica and Greece have been found in varying studies conducted over the entire past century to exhibit no physical or mental pathologies which are not also exhibited by members of non-marijuana-using con-

20,000,000 in legal jeopardy!

The AMERICAN HARVEST COMMITTEE is a non-profit organization formed to educate the public about the effects of laws which proscribe criminal penalties for victimless actions. At the present time we are zeroing in on the antiquated marijuana laws, which by the government's own admission, place 20 million citizens in legal jeopardy.

Though we still work through the legislative process, we believe that direct political action, such as demonstrations and mass non-violent civil disobedience will win our rights on this issue.

You can help us in this campaign. Purchase and wear one of our full color T-shirts. Just $7 each, postage included. Indicate size and quantity. Make checks payable to:

American Harvest Committee
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trol groups and which may also be unequivocally attributed to marijuana use. There is nothing in the new NIDA report to cast these findings in any new doubt. One wonders if the *New York Times* didn't hit the nail precisely (if inadvertently) on the head in February when it announced that "parents, whether or not they themselves have smoked pot, tend to react with anger and fear when their children start to show some of the *typical side effects of heavy smoking–the loss of interest in schoolwork, the changed emotional set toward life in general and toward the family in particular.*" (emphasis added) One wonders whether the real issue here is marijuana at all, or instead a growing tendency on the part of American children (especially the children of more traditional, authoritarian parents) to reject their parents' values.

Drug use is more often a symptom than a cause of rebellious attitudes, which is why harsher enforcement of laws against drugs only serves to reinforce rebellion and never succeeds in stamping it out. When Japanese officials imprisoned Paul McCartney for ten days early this year for bringing slightly less than half a pound of marijuana into their country (he was passing through customs after arriving for an extended Japanese concert tour) they touched off worldwide protest, especially among the young people who are supposedly the beneficiaries of Japan's harsh anti-marijuana laws. To these young people, McCartney was a culture hero made a martyr to one of their causes. As Linda McCartney told the *Los Angeles Times* after Paul had been released from jail, had cancelled his tour and had returned to England, the Japanese "made a great fuss over such a little thing. My goodness, marijuana—it's just something that grows out of the ground."

So it is. And we should by rights be just as free to grow it and buy it and sell it and smoke it and do whatever we want with it as we are to grow and buy and sell and satisfy ourselves with anything else that grows out of the ground, be it corn or tobacco or grapes. But what are the prospects for abolishing marijuana prohibition?

In Dorimare, after the practice of fairy fruit-eating had invaded the younger generation of the governing classes and become a political *cause celebre,* events proceeded swiftly to a highly satisfactory, even utopian, conclusion: the wayward youngsters returned from their adventure in the West, formed a political alliance with the despised minorities who had used fairy fruit for generations (and with those of their parents who were young enough in spirit to be "brought 'round" and influential enough to do something about it once brought), and simply won everyone else over by sheer power of persuasion and force of numbers until fairy fruit was once more universally acceptable in their country.

In the United States, as we have seen, the same sort of thing has been happening, but much more slowly and much less steadily—in fits and starts, to put it bluntly, and in such a way that at least six inches of ground is lost for every foot that is gained. Still, the overall direction is right, and progress is undeniable. The National Opinion Research Center of the University of Chicago reports that 34 percent of American adults now favor removing all criminal penalties from marijuana. Only 12 percent felt that way ten years ago. The Gallup organization reports that only a minority of Americans, 41 percent, still believe there ought to be criminal penalties of any kind for simple possession of marijuana. In California, where penalties for possession of small amounts have been reduced for the past four years, only 36 percent of the people favor returning to the earlier, harsher system. Forty-two percent of Californians now favor abolishing penalties for cultivation and sale as well. Only 13 percent of Californians felt that way a decade ago. (All California figures are from the Field Research Corporation.) In Maine, another experienced "decriminalization" state, 68 percent of the people favor keeping the present law or reducing penalties even further. And according to the National Organization for the Reform of Marijuana Laws (NORML), the removal of all criminal penalties for the private possession and use of marijuana has now been endorsed by the American Medical Association, the American Bar Association, the American Psychiatric Association, the National Association for Mental Health, the American Public Health Association, the National Education Association, the American Academy of Pediatrics, the National Council of Churches, the American Civil Liberties Union, the Consumers Union and such prominent conservatives of the sort you'd never expect to see coming out for "drug addiction" as James J. Kilpatrick, William F. Buckley, Jr., and even, would you believe it, Ann Landers and Art Linkletter.

Public opinion is one thing, of course; political action is another. And the future of successful marijuana activism, like the future of everything else, lies with the young. The young favor abolishing marijuana prohibition, make no mistake about that: 50 percent of college freshmen advocate exactly that according to Gallup; a University of Michigan study of the class of '76 makes it 61.7 percent. But the young these days are, if not exactly apolitical, then very nearly that. The overwhelming majority of the baby boom babies who grew up to become the dope smoking flower children of the '60s and the dope smoking "Me Decade" narcissists of the '70s have never participated in an election or even registered to vote. They've been asked why, and they've replied that they've had nothing to vote *for,* that they've been effectively disenfranchised by both the Republicans and the Democrats —as, in fact, they have. Why else would the majority of those who have recently been registering to vote as Libertarians be 25-40 year olds who have never before registered to vote because there has never before been a genuinely viable, genuinely major *third* party to represent them?

Those of the baby boom generation for whom marijuana is a major, top priority political issue—which is to say, about half of the estimated ten million daily U.S. smokers and a few hundred thousand others from here and there—have been especially neglected by the Republicans and Democrats. Could this possibly account for the fact that a handful of Libertarian Party signature gatherers were able to sign up 1500 new registered Libertarians in less than two and a half days last fall—perhaps the largest number ever collected in one location over so short a period of time — at the NORML-and-*High Times*-sponsored Marijuana Reform Festival in downtown San Francisco? This event attracted statewide media coverage and more than 15,000 participants who paid $2.50 apiece to eat vegetarian fast food, browse exhibits, see classic films like *Reefer Madness* and *Marijuana: Assassin of Youth,* hear speakers like West Coast NORML Director Gordon Brownell and Libertarian Party Presidential candidate Ed Clark, and smoke an amazing quantity of marijuana right under the noses of uniformed officers of the San Francisco Police Department. (These latter doubtless figured, "What the hell: the looser the atmosphere, the more people will come, and the more people come, the more money the city takes in, since the whole thing is being held in an exhibit hall [Brooks Hall] which is owned and rented out by the city government.")

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A great many of those in the marijuana movement remain apolitical, of course. Many of the most politically-oriented of them are Yippies or others whose concept of political action to achieve legal marijuana goes no farther than playing "dirty tricks" on the "ruling class" and disrupting its operations, sowing disorder and chaos in their wake. But more and more of them are coming to realize that if they want *in the near future* to get rid of the laws which threaten their businesses, force them to pay outrageous prices for their favorite smoking mixture, and leave them open to systematic brutalization at the will of the legal system, they will have to do something besides sabotage the DEA by finding out its telephone company credit card numbers and running up its phone bills. More and more of them are looking to electoral politics as the answer, and realizing that neither the Republicans nor the Democrats, neither the conservatives nor the liberals, has anything to offer them.

For years the politically active in the marijuana movement thought otherwise. They fancied that their best hope of achieving legitimacy lay in making an alliance with the liberals who had always defended the freedom to dissent, to deviate, to be different, to be a "non-conformist," and who had, moreover (many of them), seen their own teenage children arrested and jailed for the "crime" of smoking dope. The child of this fancy was NORML, the marijuana reform lobby founded in 1970 by Keith Stroup and got off the ground through the financial largesse of Hugh Hefner. At the peak of its influence in Washington, circa 1977, NORML's clout was considerable: in the spring of that year, for example, President Carter issued a major domestic policy statement on marijuana (reportedly written in large part by Stroup, at the request of the White House) in which he called for "removal of all criminal penalties for the private possession and use of marijuana."

But those days are past. President Carter learned very quickly how unpopular marijuana still is in Washington, where it isn't gaining in popularity nearly as fast as it is everywhere else in the country. After all, in Washington, a great many jobs depend on marijuana prohibition. Asking for the abolition of marijuana prohibition in Washington is like asking for the abolition of movies in Los Angeles. And it's necessary for a President to have a good working relationship with the people in the other departments of government. How else can he accomplish anything? So nothing has come of the President's bid for decriminalization. Within little more than a year of his first uttering it, in fact, President Jimmy had done a neat turn on his heel and begun vigorously defending the infamous Paraquat program, under which the U.S. State Department assisted Mexican troops in systematically poisoning the marijuana being grown in Mexico for use as smoking material by U.S. citizens (while incidentally training the Mexican soldiers in the sort of Vietnam-style anti-guerrilla tactics—such as massive defoliation—which they might need to put down any provincial uprisings touched off by the oppressive practices of their employer, the U.S.-backed Mexican government). NORML's clout had obviously faded, and quickly.

Also, as the years passed and the President's 1977 decriminalization call came to nothing and Paraquat forced marijuana smokers to give up Mexican hemp and spend three to five times the price for untainted Colombian, enthusiasm for NORML and for NORML's whole gradualist, one-inch-every-ten-years style began waning among rank and file smokers. NORML began finding it more difficult to raise money, began closing regional offices. Rival organizations sprang up—CAMP (the Coalition for the Abolition of Marijuana Prohibition) in Atlanta, the American Harvest Committee in San Francisco—and took a more hard-core line. These new organizations weren't interested in the taxed and regulated market in marijuana which NORML and various other marijuana liberals were always envisioning. Since Paraquat, it's been increasingly difficult to sell potheads on the idea that they need *government* to insure that the marijuana they buy is what it claims to be and won't be damaging to their health. And they're almost all horrified by the prospect of marijuana being farmed and processed and packaged and sold the way cigarettes are today—which means they're all horrified by the prospect of a licensed, regulated, taxed, government-dominated system of production and distribution of the kind the liberals have long since imposed on the tobacco industry and now want to impose on the marijuana industry. They just want the government out of their business and out of their lives.

And more and more of them, as has been noted, are discovering the Libertarian alternative—so many that *High Times* now considers a full-length interview with Ed Clark the sort of feature which would appeal to its readers, and has scheduled such a Clark interview for summer publication. *High Times* isn't doing interviews with any of the *other* presidential candidates, and for obvious reasons. Carter has led them down the garden path before. Ronald Reagan calls marijuana "possibly the most dangerous drug in America" (a designation which, as *LR*'s Bill Birmingham has pointed out, would seem properly to belong to orange hair dye). John Anderson has scrupulously avoided ever making a public statement on the subject (and his campaign headquarters declines to comment). And Barry Commoner is still, according to the Citizens Party, undecided about the matter.It would seem safe to assume, however, that Commoner will stop far short of full decriminalization, however "liberal" his ultimate position on pot may prove to be.

Only one serious, major candidate for President in this election year—only one candidate for President who will officially appear on the November ballot in 40 or more states, and will devote sufficient time and money to his campaign to make his presence in the election felt—is also unequivocally in favor of total marijuana decriminalization. That candidate is Ed Clark. Clark's new campaign literature on the marijuana issue (available in June, 1980) makes short, effective work of all the arguments now being raised against marijuana decriminalization, and points out the many advantages such decriminalization would bring in its wake. The marijuana issue, as Clark's literature makes clear, is an almost perfect issue for libertarians. Marijuana prohibition is a public policy which has, in the half century of its existence, violated the personal freedom of millions upon millions of Americans, and led directly to harmful and coercive interventions in our economy and in the internal affairs of other nations. Libertarians, who are justly famous for their advocacy of personal freedom, economic freedom, and a non-interventionist foreign policy, would seem uniquely qualified to expose the perniciousness of such a public policy and to specify the reasons for its abolition. Truly, as the legend on the American Harvest Committee's fund-raising tee-shirt puts it, where marijuana is concerned, "freedom is the issue." ❑

LR executive editor Jeff Riggenbach is the author of the forthcoming book *The Politics of Dope*, which he is now completing under a grant from the Cato Institute for publication early next year.

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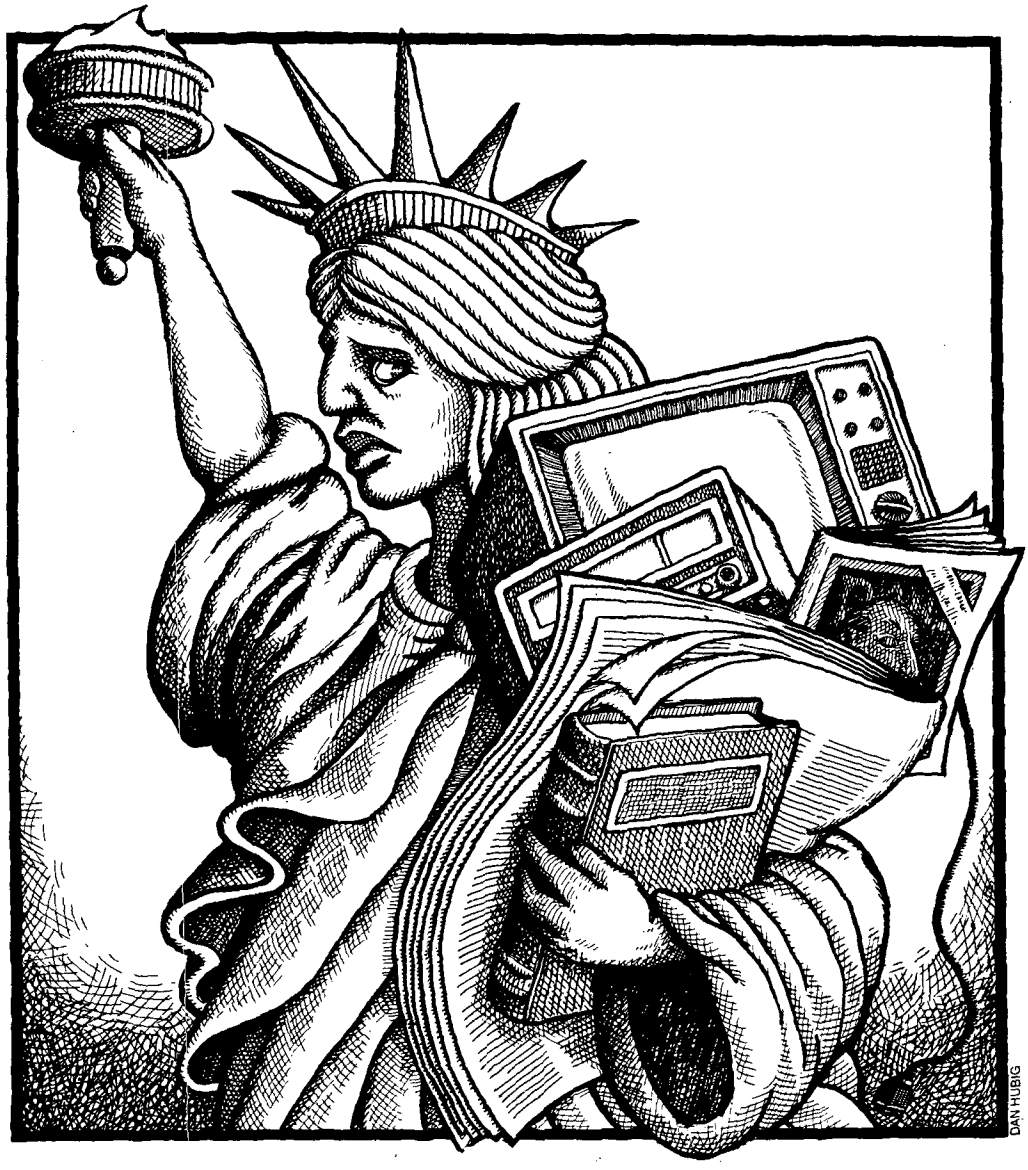
BOOKS AND ARTS



"No law" means no law

JOAN KENNEDY TAYLOR

The First Freedom: The Tumultuous History of Free Speech in America, *by Nat Hentoff. Delacorte Press, 340 pp., $9.95.*

I AM A FIRST AMENDment buff the way some people are Civil War buffs. Like the Civil War buffs, we First Amendment buffs have the names of battles to conjure with: but instead of Antietam, Gettysburg, Vicksburg and Bull Run, they are *Schenck, Miller, Chaplinsky,* and *Gitlow.* These Supreme Court cases are all here, and many more, in Nat Hentoff's new book; and as might be expected of a staff writer for both *The New Yorker* and *The Village Voice* (as well as a columnist for *Inquiry*), he has made these battles come alive.

But he has done more than present legal arguments fairly, exciting as that may be to a confirmed buff. He has placed these arguments in intellectual and historical context, so that the reader can understand their connection with social movements, with political concerns, with citizens' hopes and fears.

The book doesn't start historically, and it isn't a chronologically arranged history of First Amendment cases. Rather, Hentoff starts with cases that show what the First Amendment means and how it has been applied to students, teachers, and librarians, saying, "I begin this account of the foundation of all our liberties with the young, for if they do not have reason to believe that the First Amendment is of real, palpable, personal value to them, its future will be in some peril." He makes it clear from the outset that the personal value of the First Amendment is not simply in the outcome of major Supreme Court cases; these cases lead to subsequent lower court decisions, regulatory decisions, policy decisions by school boards and other authorities, even to the "spontaneous" vindication of rights as a result of newspaper publicity. "Once the Supreme Court has handed down a decision," Hentoff writes, "the work of the citizenry — including

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students — may have only begun. Where there is official resistance, often hidden, to a particular ruling, any concerned citizen can become a working constitutionalist by fighting that resistance, often with the free legal help of the American Civil Liberties Union or one of its affiliates throughout the country. Otherwise, even a Supreme Court decision will not get off the paper on which it's written."

So in the first chapter of *The First Freedom* we read not only about the first Supreme Court case that "directly spelled out the free speech rights of students" (*Tinker* v. *Des Moines Independent School District,* 1969), which was the result of the suspension of three school children for wearing black armbands to school as a protest against the war in Vietnam; we read also about a high school girl who was threatened with having her grades lowered as a punishment for wearing a similar black armband — until her father, who knew about the *Tinker* decision, threatened to take the school administration to court.

It is freedom of *political* speech that makes our First Amendment so extraordinary.

And in the other three chapters in this first section we learn of student editors, teachers, and librarians whose rights were curtailed in various ways—and whose rights were vindicated in various ways. There is the story of Priscilla Marco, for instance, who not only appealed to the New York City Board of Education but to the New York Civil Liberties Union when her high school principal refused to let her article demanding freedom of the press for students be published in the school newspaper, *Skyline.* The principal, Dr. Howard Hurwitz, was so sure that one of his responsibilities was to make sure that only "suitable" material was published in *Skyline* that even when the chancellor of the entire school system ordered him to print the article, he ignored the order.

The New York Board of Education took dramatic action. "On June 23, 1975, in an action unprecedented in the history of American secondary education, a group of high-level Board of Education officials, accompanied by security guards, entered Long Island City High School and distributed three thousand copies of a special edition of the school paper, *Skyline,* which they themselves had published. . . .

"The special edition of the school paper was bannered AN ISSUE OF FREE PRESS. Included were Priscilla's original article and a revised, updated version. There was also 'An Open Letter to Students, Staff and Community' from two high officials of the Board of Education. Pointing out that 'even the President of the United States is criticized and praised in different newspapers, depending on the judgment of reporters about his actions,' the two board members underlined that 'in schools preparing young people for their responsibilities as citizens, we must be sure that the rights of the press are understood and protected.'"

Of course, if a case has to be decided by the courts, the time span involved can mean that even if the people whose rights have been curtailed win, they lose. Hentoff tells us of, among others, a teacher whose contract was not renewed because he assigned Kurt Vonnegut's *Slaughterhouse-Five* to his class (he was later vindicated and awarded $5,000); a librarian who "chose to leave the school" after a (successful) year's fight to keep a poem by a fifteen-year-old girl from being physically torn out of an anthology in a high-school library because it contained strong language; and Charles James, fired from his teaching job for wearing a black armband to school to protest the Vietnam War, whose "vindication took three years, and . . . was so destructive financially for James, his wife, and their four daughters that the family was forced to go on welfare from time to time."

This opening section of *The First Freedom,* concerned as it is with schools, *does* dramatize the "real, palpable, personal value" of the First Amendment to the young, although it also indirectly works to perpetuate an ambiguity which it is important for libertarians to explode. These students and teachers and librarians had their rights violated, not by school officials, but by agents of the government—who usually happen in our present society to be the same people. But there is nothing in the First Amendment to prevent a religious order, say, from establishing a school whose newspaper may publish nothing but religious tracts, or whose teachers may express no views to their classes that contradict the official views of the order. The First Amendment is a limitation only on what *government* can do: it reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Hentoff does quote a section of the leading case in this area, the *Tinker* case, which says, "In our system, *state-operated schools* may not be enclaves of totalitarianism" [emphasis added]; still, a careless reader could very well overlook this quotation and conclude from these chapters that the First Amendment prevents *all* school authorities, whether public or private, from restricting the expression of students, teachers, and school librarians. A small caveat.

After these contemporary public-school cases, Hentoff gives us 12 chapters of the history of the concept of *sedition,* from fifteenth century Britain, when it was a crime punishable by death to call the king a fool, to a 1969 case decided by the Court of Appeals for the District of Columbia, in which it was ruled "that it was unconstitutional to punish a Communist party member by 'exposing' that member's affiliation in public." These are followed by two chapters on freedom of religion, one on the prohibition against the establishment of religion and the other on protecting the "free exercise thereof" (all public-school cases again). Three chapters in a section entitled "The Constitutional Powers of the Free Press" deal with various justifications for prior restraint: "public nuisance," national security, judicial gag orders to ensure a defendant's fair trial, and the recent *Progressive* case, which brought to light "a new argument by the government (put forth in the course of *The Progressive*'s court battles) that while the First Amendment protects political speech, it does *not* protect such 'technical speech' as information about nuclear weapons." This section also discusses a case involving the press's admission to pretrial hearings, and the 1972 *Branzburg* v. *Hayes* decision in which it was held that reporters did not have a consti-

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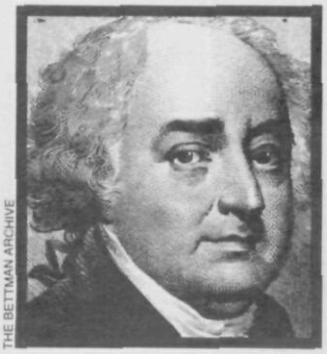
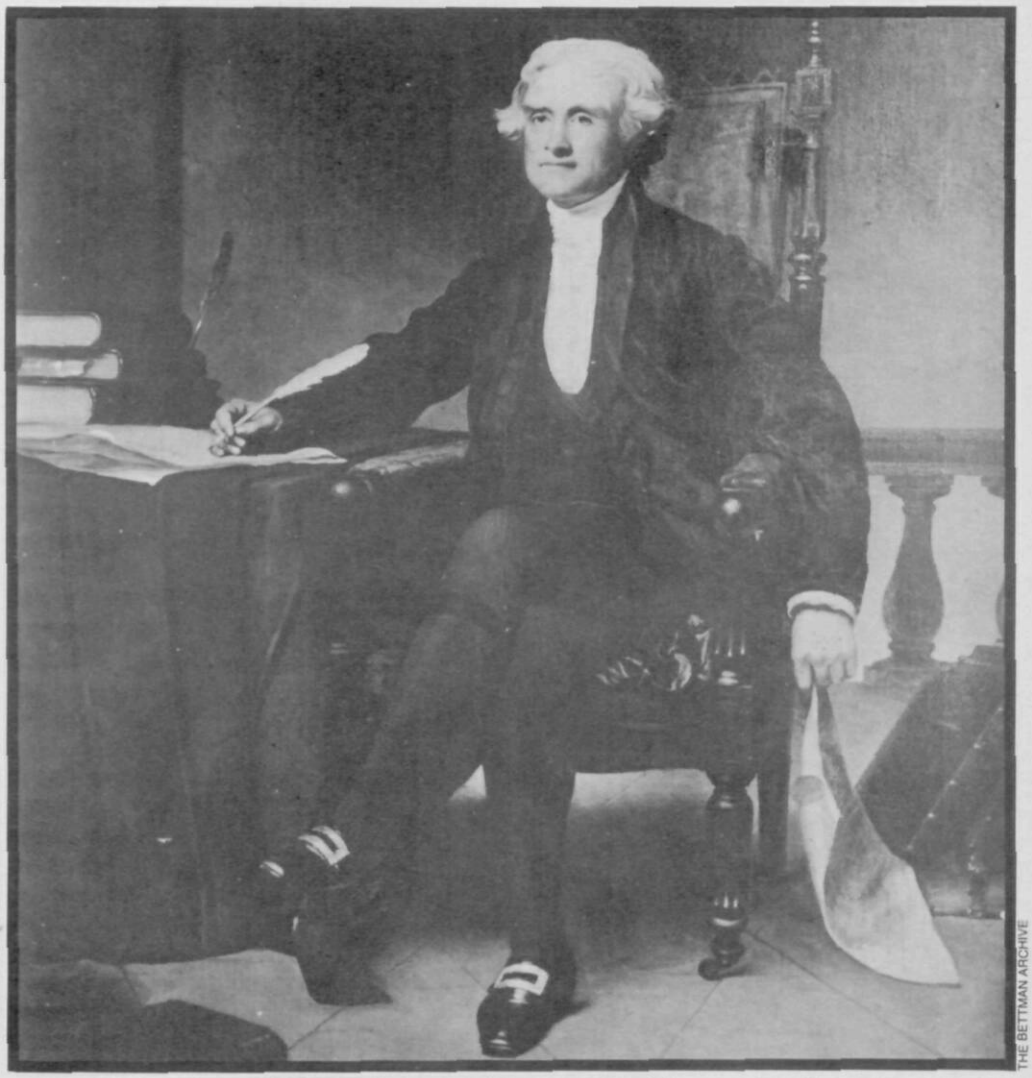


THE BETTMAN ARCHIVE

tutional right to protect the confidentiality of their sources.

The final section, "The Outer Limits of Protected Speech—and Beyond," contains a chapter on libel, a chapter on the Fairness Doctrine which requires broadcasters to give equal time to opposing points of view, a chapter on obscenity, and a final chapter on so-called "fighting words"—the basis on which an attempt was made in 1978 to stop the American Nazi Party from holding a march in the village of Skokie, Illinois.

It is appropriate that by far the largest single section of this book is devoted to the history of political speech, for it is this that makes our First Amendment so extraordinary. All governments primarily want to protect themselves and their officials; the harshest penalties in law are always laid upon those who commit treason, or kill a member of the government, or desert the army in time of war. And almost all governments have made it a severe crime not just to harm, but to criticize or hinder those who formulate or execute government policy. It is not surprising, then, that in 1558, the year that Elizabeth I became Queen of England, it was not only made an act of high treason "to imagine bodily harm to the queen," but it was decreed that people caught with seditious books were to be executed. Seditious speech was defined, according to Hentoff, as "language inciting the people to rebellion against the authority of the state." To suppress it, it was made a crime to print a book unless it had first been examined and licensed by government officials. This prior restraint of publications through licensing was ended in England in 1695, but prosecutions and even executions for the crime of "seditious libel" continued throughout eighteenth-century England.



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Although both supported free speech in colonial times, John Adams, as President, signed the first Sedition Act, leaving President Thomas Jefferson to pardon all its victims.

In 1662, the licensing of publications was imposed in the colony of Massachusetts. The first newspaper to be published in the colonies (in Boston in 1690) was refused a license and suppressed after one issue. An attempt was made by colonial authorities to continue licensing in Massachusetts even after it had been ended in England—a Boston printer named James Franklin was jailed in June of 1722 and ordered to stop publishing unless "supervised," but his brother Ben (*the* Ben Franklin) continued to get out the paper for him. The authorities couldn't get a grand jury to indict James Franklin, however, and finally abandoned the attempt.

Although licensing had been abandoned, the concept of seditious libel (*criticism* of officials which tended to incite rebellion) had not been. The colonial assemblies summoned critics before them, to apologize on threat of criminal penalties. In 1735, the royal governor of New York had John Peter Zenger, editor of *The New York Weekly Journal,* tried on a charge of "raising sedition," but a recalcitrant jury freed Zenger after accepting lawyer Andrew Hamilton's assertions that truth is a defense to a libel charge and that in such cases the jury decides both the facts and the law. (Both of Hamilton's assertions were later adopted by the constitutions of Pennsylvania and New York, but they had no legal standing at the time.)

In such a climate, men such as George Mason and John Adams began to champion the concept of freedom of the press, freedom specifically to criticize the government. And after such men had *become* the government, many of them continued to be concerned that freedom of expression should be protected. "When the Constitution was sent out to the states to be considered for ratification," writes Hentoff, "protests of varying degrees were heard in all thirteen of them about

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the absence of a bill of rights." Opponents of this idea didn't question natural rights—they only questioned the necessity of mentioning them in a constitution.

Others, however, aware of the vulnerability of dissent in England and the colonies, strenuously urged that these protections be spelled out. James Madison, in a letter to Thomas Jefferson, pointed out that those rights which were solely dependent on majority opinion could be snuffed out whenever that opinion changed.

"In Virginia," Madison wrote, "I have seen the [state] bill of rights violated in every instance where it has been opposed to a popular current. . . . Wherever the real power in a Government lies, there is the danger of oppression. *In our Government, the real power lies in the majority of the Community,* and the invasion of private rights is chiefly to be apprehended not from acts of Government contrary to the sense of its constituents but *from acts in which the Government is the mere instrument of the major number of the Constituents*" [emphasis added].

In sum, when it comes to the rights and liberties of *individual* dissenters, a democratic majority can be as repressive as a king.

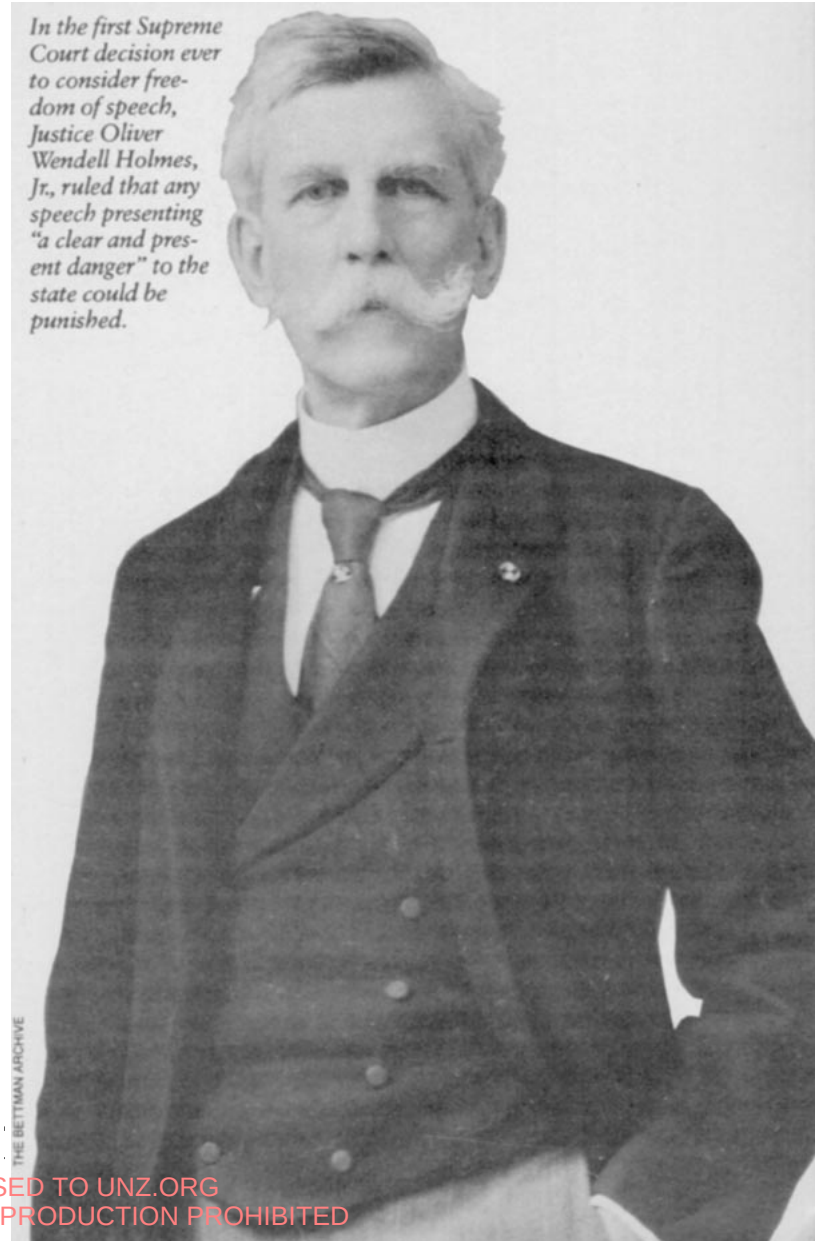
Although the Bill of Rights was added to the Constitution, an amendment urged by Madison to prohibit the *states* from violating "the equal rights of conscience, or of the freedom of the press," was not. And additional language proposed by Virginia: "the liberty of Conscience and of the press cannot be cancelled, abridged, restrained, or modified by any authority of the United States," which would have prohibited certain court and presidential actions that were later held to be constitutional, also failed to be adopted.

And seven years after the adoption of the First Amendment, Madison's prediction came true. With the Federalist party controlling the majority of seats, Congress passed the Sedition Act, whose first victim was an anti-Federalist Congressman, Matthew Lyon of Vermont, who was reelected to Congress from jail. (The President who signed this Act was the same John Adams who had championed the freedom of the press to criticize colonial governors.) The Sedition Act outlawed speech that would bring the President or Congress "into contempt or disrepute," on penalty of a $2000 fine and up to two years' imprisonment. There were, according to Hentoff, 25 arrests, 15 indictments, and 10 convictions in the two years the Act lasted, but "popular opinion was so shocked by it that the presidential victory of Thomas Jefferson in 1800 was due in considerable part to the citizenry's abhorrence of this Federalist legislation. The Sedition Act expired on March 3, 1801; Jefferson pardoned everyone who had been convicted under it. In time Congress also repaid most of the fines."

This Act was never brought to a Supreme Court test. As a matter of fact, the Supreme Court ruled on *no* free-speech case until 1919, when the constitutionality of another Sedition Act (this one enacted during World War I) was questioned. In the more than a century between the two Sedition Acts, it was established that the Bill of Rights did not restrain state governments, only the federal government. Although the Fourteenth Amendment was intended by its framers to limit the powers of state governments, and although the wording of its first clause seems plainly to do that ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"), a tortuous decision of the very first Fourteenth Amendment case held that states were only prevented from abridging those rights that pertained to *federal* citizenship, such as the right to hold federal office or to petition Congress.

Many state laws that restricted freedom of speech were passed during this period, therefore, without constitutional challenge. Southern states passed laws prohibiting any attacks on the institution of slavery. Seven anarchists were convicted of murder when an unknown bomber killed police and workers in Chicago's Haymarket Square in 1886; the anarchists were convicted because they had advocated violence, although the identity of the bomber was never discovered. New York passed a criminal anarchy act in 1902, making it a crime to join any organization that taught or advocated such ideas. And from 1905 until World War I, the Industrial Workers of the World (also known as Wobblies) "made free speech the basic engine of their organizing drives by capitalizing on attempts to shut off their own speech." These attempts were generally made by local authorities, and included police beatings and even torture, as well as imprisonment.

However, acts of the federal government also violated the First Amendment during this period. Outstanding among them were the executive decisions of President Lincoln during the Civil War to intercept



In the first Supreme Court decision ever to consider freedom of speech, Justice Oliver Wendell Holmes, Jr., ruled that any speech presenting "a clear and present danger" to the state could be punished.

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"treasonable correspondence" and to order some newspapers closed and editors jailed. In 1903, Congress passed an immigration act "which, for the first time, forbade entry into the United States of certain immigrants because of their association and beliefs." And in 1917, again under the threat of war, Congress passed an Espionage Act under which there were 2000 prosecutions, almost half of them resulting in convictions. In 1918, a new Sedition Act was passed as an amendment to the Espionage Act. It was

Hentoff makes the point that "a democratic majority can be as repressive as a king."

under these acts that the notorious Palmer raids were sanctioned: in January of 1920 (while the Espionage Act was still in force because, in the absence of a signed peace treaty, the war was not technically over), agents of the Justice Department were directed by Attorney General A. Mitchell Palmer to conduct raids in search of suspected radicals in 33 cities in 23 states. On January 2, more than 4000 persons were arrested, followed, on January 6, by 6000 more. Palmer was hoping to deport immigrant members of the Communist and Communist Labor parties. In the process, his agents conducted illegal searches, held people for days without hearings, and arrested such "dangerous radicals" as 39 bakers who had happened to meet on the wrong night to start a cooperative bakery.

And finally, 118 years after the First Amendment had been adopted, the Supreme Court ruled on freedom of speech. In protesting the first Sedition Act, over a hundred years before, James Madison had asked what Hentoff calls "the fundamental question": "'Is then the federal government destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it?'

"The clear answer is in the First Amendment. Said Madison, 'The answer must be that the federal government is destitute of all such authority.'"

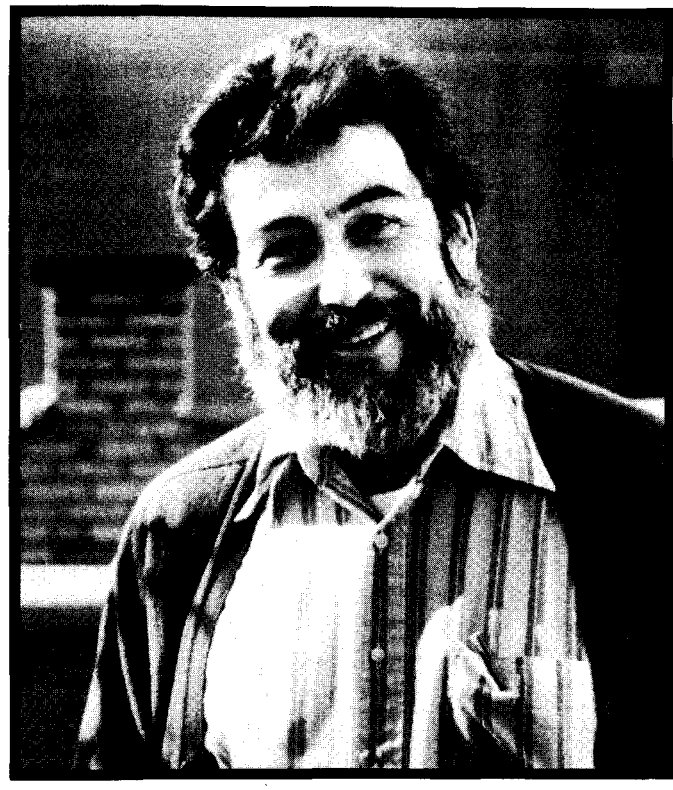
Faced then with the case of Charles Schenck, the general secretary of the Socialist party, who sent 15,000 leaflets calling the draft unconstitutional to young men liable to be drafted and for so doing was convicted under the 1917 Espionage Act of conspiracy to circulate material aimed at causing insubordination, what did the Supreme Court say? How did it answer Madison's "fundamental question?"

Justice Oliver Wendell Holmes spoke for a unanimous Court that *upheld* Schenck's conviction. He held that Schenck's act presented a "clear and present danger" to the government, and that in cases of such danger, freedom of speech was not absolute. "The most stringent protection of free speech," he wrote, "would not protect a man in falsely shouting fire in a theatre and causing a panic."

In another 1919 case, *Abrams* v. *United States*, the Supreme Court upheld the twenty-year sentences given three men who printed anti-war leaflets and threw them out of a window (although Holmes dissented, thinking that the method of distribution didn't present enough of a clear and present danger). And five years later, the same Supreme Court convicted the authors of a "Left Wing Manifesto" under New York State's criminal anarchy law for advocating "revolutionary mass action," even though the action had not been advocated during war time and had had no discernibly dangerous effect. This conviction was justified under an old Common Law "bad tendency" test, which outlaws speech which "*tends* to corrupt public morals, incite to crime, or disturb the public peace." However, it was this case, *Gitlow* v. *New York*, which finally extended the First Amendment to state governments, by saying, "For present purposes we may and do assume that freedom of speech and of the press—which are protected by the First Amendment from abridgement by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the states."

The beginning of World War II brought us the Smith Act (Title I of the Alien Registration Act), which Hentoff describes as "a *peacetime* sedition law," since the United States was still neutral in the European conflict. The Smith Act made it a crime "to advocate or teach the overthrow or destruction of any government in the United States by force or violence (from a village to the federal government). Accordingly it was also made a crime to print, edit, publish, circulate, sell, distribute, or publicly display any written or printed material in furtherance of such advocacy. If two or more people conspired to commit any of these offenses, they too were subject to the criminal penalties of the act."

Under the Smith Act, the convictions of 11 leaders of the Communist Party of America were upheld in 1951 (*Dennis* v. *United States*). Six years later, the convictions of 14 others were reversed, in *Yates* v. *United States*, on the theory that the advocacy of actions may be punished without violating the First Amendment, but the advocacy of ideas may not. No further indictments were issued under the Smith



MARTHA KAPLAN

Nat Hentoff

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Act, but the law remained on the books. Despite an increasing tendency on the part of judges and legal scholars to hold the view that the First Amendment *absolutely prohibits* government action (a view advocated by James Madison in the eighteenth century and reintroduced to the Supreme Court by Justice Hugo Black in the twentieth) none of the sedition acts that Congress has passed was ever declared unconstitutional until 1964, when, in a libel case brought by the commissioner of public affairs in Montgomery Alabama against *The New York Times*, Justice William J. Brennan wrote for a unanimous Court:

> Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history. Fines levied in its prosecution were repaid by an Act of Congress on the ground that it was unconstitutional. . . . Jefferson, as President, pardoned those who had been convicted and sentenced under the Act and remitted their fines, stating: "I discharged every person under punishment or prosecution under the sedition law, because I considered, and now consider, that law to be nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image." The invalidity of the Act has also been assumed by Justices of this Court. These views reflect a broad consensus that the Act, because of the restraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment.

Throughout this book, Nat Hentoff, himself a First Amendment absolutist, gives a very fair presentation of the arguments that have been mounted on both sides of these major First Amendment issues. And by looking at the development of these arguments, libertarians can see a microcosm of the problems which surround the promotion of the idea that government should withdraw itself totally from an area—any area—of life. They will be delighted to find that Hentoff does a marvelous job of demolishing the arguments for allowing less "freedom of the press" to the broadcast media than to the print media. And they will be enlightened to find that the first Supreme Court case dealing with freedom of speech was argued in the context of a long history of concern about rebellion, *and* a long history, which is now being reemphasized by writers like Hentoff, of the assertion of minority rights in defiance of majority rule.

Those who would limit speech for reasons of "national security" are concerned lest the Bill of Rights be used as a "suicide pact," as Justice Arthur Goldberg once put it. If we give free speech to those whose political program includes destroying free speech, the objection goes, won't we help them to prevail in this goal? Believers in unlimited majority rule see no way out of the dilemma, and are appalled at Justice Oliver Wendell Holmes's dissent in the *Gitlow* case: "If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way."

However, the history of the First Amendment shows us that we must limit, not individual speech, but majority power. As Justice Robert Jackson wrote in an opinion protecting the right of Jehovah's Witnesses to refuse to salute the flag (*West Virginia State Board of Education* v. *Barnette*), "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

Over the years, there has been a noticeable trend in the direction of First Amendment absolutism—from the restrictive climate of *Schenck*, through *Yates*, to the present-day activities of the ACLU in defending even the rights of Nazis. Hugo Black was the first twentieth-century absolutist to influence Supreme Court decisions; Justice William O. Douglas soon joined him; now their views are supported by quite a few legal scholars. It is now a respectable intellectual position to hold that where the Bill of Rights says, "Congress shall make no law," that means *no law.*

This is the First Freedom. Now we must realize the others on Justice Jackson's list.

Joan Kennedy Taylor has worked as a paralegal in New York City and is now senior editor of *The Libertarian Review*.

Governing America

DAVID BRUDNOY

In the Absence of Power: Governing America, *by Haynes Johnson. Viking, 339 pp., $12.95.*

OENOPHILES (AND EVEN wine lovers) swear that with the noblest product of the grape you get what you're paying for, give or take an occasional bottle of Mouton Rothschild 1832 at $10,000 a bottle. But do we get what we're paying for in government?

Consider the federal budget. Mr. Haynes Johnson, who writes for *The Washington Post* and picks up Pulitzer prizes now and again, reminds us that Jimmy Carter's first budget of $500 billion was five times greater than John Kennedy's, fifty times greater than Franklin Roosevelt's, five hundred times greater than Woodrow Wilson's. Anybody care to expound on the five hundred times more pleasure the American people get from government today than Grandpa got from government in 1913?

In the Absence of Power is a compendium not only of delicious statistics like the one just cited comparing budgets, but also of provocative insights into the nature of bureaucracy, statecraft, and, most particularly, the presidency. Johnson follows Jimmy Carter from candidacy to initiation through the first three years of his presidency, contrasting the Carterian images with the brutal realities, in the process creating a splendid book which will be useful long after this particular presidency has passed.

The title itself is ironic. Most conservatives would (at least in theory) regard the absence of power as delightful; most liberals would regard it as frightening. But irrespective of ideology or philosophy, most Americans have begun to see themselves, ourselves, as powerless, and our government not as a direct reflection of us, but as a virtually alien body.

Johnson's book provides ample justification for that belief. What Hath Washington Wrought? A gigantic apparatus for the churning out of paper, for one thing; a massive employment agency for the staffing of superfluous bureaucracies, for another; and for a third, a privileged class of individuals who by all measurable standards live better than the people who pay their salaries.

Here we have a Federal government whose welfare applications alone exceed 100 million forms a year;

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here a Federal employee work force of 3,000,000 and a state and local employee work force of 12,000,000. In fact, the Federal work force has barely grown at all in twenty years, while the state and local work forces have tripled in thirty years. But who created that spurt in state and local employees? The bureaucrats far from Washington were mandated by the politicians sent to Washington: "Sent to Washington [they] provided these through new legislation establishing new programs and agencies, and new bureaucracies at home arose to handle the federal largesse."

Washington, Haynes Johnson reminds us, and with ample evidence convinces us, is the richest capital city the world has ever known, enjoying a higher standard of living—higher by far — than is known across the land. The mini-horror stories float through *In the Absence of Power* like a disco beat: they are inescapable, and if adequately digested by the reading public they will surely annoy, perhaps enrage, a good many people.

And Carter? Johnson knows his man well, admires him for his energy and devotion to duty, for his sincerity and faith, but admonishes him, or at least chides him, for his inability to get a grasp on what he set out to tame, and for his inconsistencies as chief executive. Johnson quotes James Perry, who wrote in *The National Observer* that Carter "is a very tough fellow, he seems to nurse grudges and he tends to lash out at people who criticize him, even when their intentions are honorable." If true, this ought to guarantee some Carterian fury at Haynes Johnson's wonderfully honorable, but brutally critical book.

Neither the Republicans nor Teddy Kennedy need expect to take much comfort from Haynes Johnson; he writes not against Carter, but for America. Reason enough to read his book carefully, and to treasure it.

David Brudnoy is *LR*'s film critic.

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Sabbatical labor

JOHN HOSPERS

Working for Capitalism, *by Richard M. Pfeffer. Columbia University Press, 400 pp., $20.00, $7.00 (pb).*

SEEING A BOOK ENTITLED *Working for Capitalism,* published by Columbia University Press, was the occasion for some surprise. Had this institution, in the heart of the enemy country, really had the guts to come out with a book in favor of the capitalistic system on which the bulk of its donations depends?

I needn't have worried. The fact that the "s" in "capitalism" was written as "$" should have tipped me off. The book is a vehement and savage attack on capitalism.

The author, an associate professor (of what, we are not told) at John Hopkins University, decided to spend his sabbatical leave, not doing research or writing as demanded by the university, but working at a laborer's job in a factory, in order to "see reality" from the worker's point of view. For this he got in trouble with the university. But his purpose and his determination to go through with it in spite of endangering his tenure are no doubt laudable enough. The result of his seven-month employment outside the ivory tower is this 400-page book.

Pfeffer found factory work laborious, monotonous, and "demeaning." He felt himself to be nothing more than a cog in a huge machine, with little concern taken over him as a person. He was a fork-lift operator, and there are many pages of understandable irritation about operating fork-lifts that are dangerous, that work only intermittently, that should be repaired but aren't. I certainly have no objection to his complaints *per se; I* would not relish operating a fork-lift day in and day out under the conditions he describes. Nor would I applaud a company for which it would have been cheaper to buy a new platoon of fork-lifts rather that put up with the aggravation, the danger, the lost time and the expense of operating old and inefficient ones.

It is the conclusions Pfeffer draws from his work-experience which I find disturbing. It is true that much factory work is boring, dirty, even dangerous; and yet it has to be done. In a free-enterprise system, such work carries higher pay as an inducement to get people to do it. Pfeffer doesn't consider this sufficient recompense, but some people do. The fact that he was drawing his sabbatical pay the whole time and didn't really need the added wages doubtless diminished the inducement in his case and made the work seem the more irritating.

Similarly, it is true that a person in a large factory is rather like "a cog in a huge machine." But if the purpose of it all is a marketable, affordable product, and it is from the income that stems from the sale of that product that one's wages come, how else would one have it? How much would be added to the price of every product if every factory worker had a benevolent spirit hovering over him patting his back and purring to him about how worthwhile his work really was? There is an old joke about a newly hired traveling salesman who is told by his employer, "Now if there's anything you need to tell me, just wire me." The first night out the salesman wires, "I got a lovely room with a nice view and an oversize bathtub." The employer wires back, "So glad you are comfortable. Have a good sleep. Love and kisses. Goodbye."

Others of Pfeffer's complaints tend to cancel each other out. He wants more plant safety, yet objects to quality control inspections. He objects to being overworked, yet when he has hours of free time because a machine breaks down he objects to not being able to do his work. If he has to use different lifts with different operating instructions, he complains because this "breaks the routine" and makes him take longer to do the same job; but if the lift works well and he gets done in time, the job is "too monotonous" and he tends to be less alert and hence accident-prone.

Pfeffer finds taking orders from foremen and managers "demeaning." But how else could a large scale factory be organized? *Someone* has to make decisions and someone else has to implement them: what to produce, how much, and how the workers' efforts are to be coordinated. In

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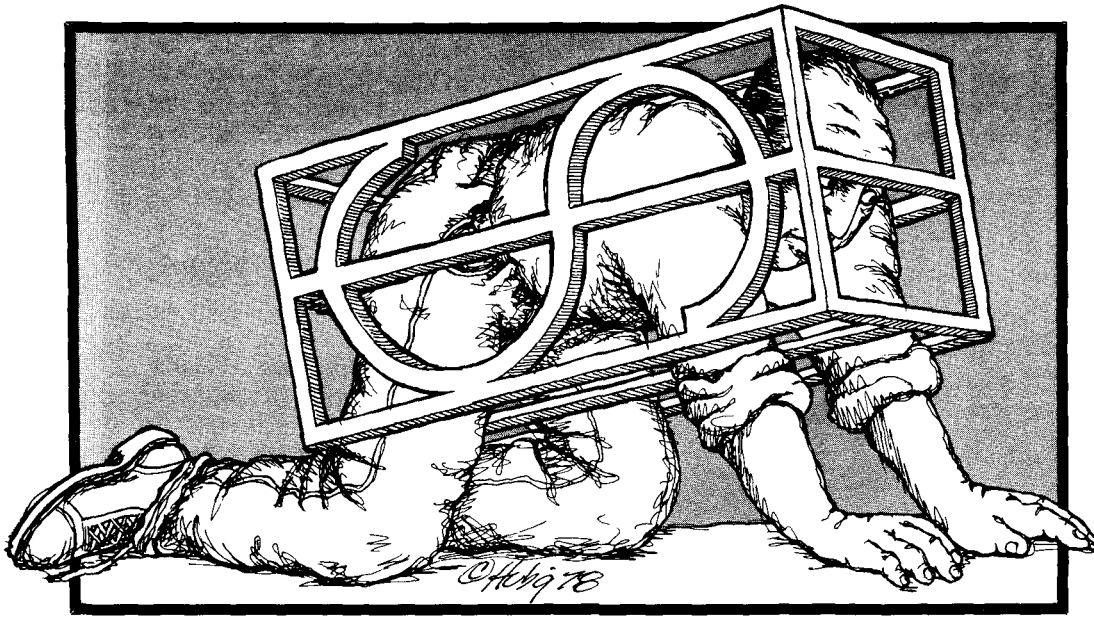

non-capitalist nations like the U.S.S.R. there are plant managers too, but they have the power of the State behind them; in the U.S. one can at least change jobs. In the U.S.S.R. you can't do that without permission, and you can't go on strike either.

But when you go on strike, Pfeffer complains, "you never get back the money you lose .... A long strike could wipe out much of a family's savings .... Exercising our 'rights' in practice tends to be very costly." But what is the alternative — to be guaranteed a full wage while you're out on strike? I thought the right to strike was a right you exercised *in conjunction with* its consequences, such as a lack of economic security during that period. Who would refuse to strike if he could collect full pay for not working? But perhaps Pfeffer sees no need to accept responsibility for the consequences of one's choices. He complains that many of his fellow workers had bought fancy suburban houses beyond their means, and had to work overtime to keep up the payments. Should someone else (all other taxpayers, perhaps?) rescue them from the consequences of that decision?

Pfeffer even deprecates the occasional "company open house" to which all workers are invited; while these are very successful, he writes, they "are transparently and essentially public relations gimmicks and ... primarily aimed at maintaining or improving production." But if this isn't a worthy motive, what other would the author suggest? Selfless altruism? And how long would a factory last on such motivation?

Under capitalism, says Pfeffer, only production matters; and "if production is the heart of capitalism, capitalism, not production as such, is the problem." Is he unaware that only high productivity, which capitalism and only capitalism has ever made possible, is what enables factory workers to buy their own homes (they can't do that in the U.S.S.R.) and to have "necessities" which are considered luxuries almost everywhere on the face of the earth? If only "the government assured all its citizens of decent minimal standards of health, education, and welfare over their lifetime," Pfeffer says, everything would be all right. But how much *more* would then be taken out of every worker's paycheck to finance this (and he himself complains that it is already too much)? In any case, he says, it won't happen, because "a capitalist government would be subverting the bargaining power of capitalist business." (As if the U.S. were really a capitalist nation today!) He excoriates the movie and television industries for serving capitalism because they make profits. I think it is more nearly true that much of the activity in these industries is serving instead the demise of capitalism (see Benjamin Stein, *The View from Sunset Boulevard*).

"We have a choice," Pfeffer says. "We can resign ourselves to capitalism and the growing dehumanization it entails. Or we can recognize the need and actively work not only for progressive reform but for an American socialist revolution." His experience in actual work-situations has led him, he says, to embrace Marxism. But in a Marxist nation, will the unpleasant jobs disappear, and everyone get the job he wants? Will every worker feel "personally involved" in his work, assured that others "really care," and that he is not "a cog in a huge machine"? The author's villain is "the large corporations" (has he read Robert Hessen's *In Defense of the Corporation*?). He says nothing unfavorable about government. Yet suppose that the government owned the means of production: would the ills he complains of disappear? Do the workers in socialist nations feel that others "really care"? Are their jobs more pleasant than in the U.S.? Do they pay as well—even *half* as well? If he is "alienated" here, is the laborer more "dignified" in a nation ruled by the Anthill Theory of Labor?

Pfeffer is quite vague about the actual details of the Marxist society to which he aspires. He does not deplore production, he says, only production à la capitalism. Well then, let him contemplate production under socialism — of which he will get a detailed impression from Chapter 9 of Hedrick Smith's *The Russians* — or this passage (p. 123) from Vladimir Bukofsky's *To Build a Castle — My Life as a Dissenter:*

> I saw for the first time what a Soviet enterprise is like — with all its deceptions, its hollow facade, and its coercion. Nobody in the bus factory was in a hurry to work; the workers preferred to sit in the smoking room until the foreman appeared, when they all dashed to their places. "Why should we hurry for the money they pay us?" said the workmen. "Work's not a wolf, it won't run into the forest!" In the mornings they were almost all drunk or hung over, and throughout the working day people would be regularly detailed to slip over the fence for some vodka. Only one man put in a full day's work. The rest hated him, and when pointing him out would rotate one finger meaningfully by the temple. They were always looking for chances to do him dirt, either by surreptitiously damaging his machine or by stealing his tools. "Want to be a champion and raise the targets?" they said spitefully. It turned out that if one man exceeded the target, the target would be raised for all of them the following month, and they would have to work twice as hard for exactly the same money.

Shades of Starnesville's Twentieth Century Motor Company, in Ayn Rand's *Atlas Shrugged*.

John Hospers is a Professor of Philosophy at the University of Southern California and the author of many books and articles on philosophy, including *Libertarianism*.

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On View

The mouths of babes

DAVID BRUDNOY

The Tin Drum's *beautiful and monstrous Oskar, who is "the symbol of perverse resistance and of the childishness of those Germans who sought the Big Daddy of Naziism."*

AND A LITTLE CHILD will lead them. At least, so it's been said. But lead them *where?* Oskar, the central character in *The Tin Drum,* Volker Schlöndorff's Oscar-winning film version of Günter Grass's gargantuan post-war novel, would seem likely to lead not away from the fascism his world succumbs to but instead to another fascism engineered by Oskar. This is one child of whom none but the dewy-eyed could say: isn't he darling, isn't he sweet. Oskar is neither, nor, as we see right from the start, with Oskar emerging wide-eyed and grumpy from his mother's womb, is he an ordinary person, much less an ordinary child. He is a monster, a perverse brat, a tyrant. And he is the clearest visionary in the world, in the world according to Günter Grass.

The Tin Drum is both cautionary and chiding, a stern finger wagging at the timorous Germans, the groveling Poles, the stupid generation that bought Hitler's package and lived to rue the purchase—or died because of it; a stern finger, this, and a warning to others, a grotesque tale of a nightmare others could with not too much difficulty find themselves experiencing. As such it is at once allegory and parable, its title both symbol and metaphor. Oskar and his faithful companion, the gift of his childhood repeatedly supplanted by replicas, his tin drum, march not only to a different beat; they sound the death knell for the world they inhabit.

The title is an obvious symbol, clever but not remarkable. Drums make a fearful racket, they are hollow, and they are the primary musical instruments. The symbol is clear. The metaphoric connotation is perhaps less clear but easily discerned: the metal is common, neither much esteemed (though very useful) nor dearly valued. Thus we are led from the title as symbol to the title as metaphor, to contemplate baseness and with it arrogance and bedlam. With this object Oskar creates his personal space, inviolable by others, his territory, his *Lebensraum.* And with his internal gift, a literally glass-shattering scream, he expresses his rage, his frustrations, his power. The child beats his drum, he breaks glass, and he remains small, willing himself not to grow, as if in refusing to shape up to adults he can fend off the adult world which he loathes both because it is pathetic and because he doesn't happen to rule it.

A freakish world deserves its freakish eccentrics. Danzig, where Oskar lives, falls victim, early, to fascism. In this milieu the good burghers sidle up to the jackboots, to lick them and join them; among these recruits is the man considered to be Oskar's father. There is more than a little doubt about Oskar's parentage, since his mother shares her affections with her husband and her cousin; the husband is German, the cousin Polish; the former is a merry believer in the Hitlerian fantasy, the latter a resister, eventually a victim. Actually everybody in Oskar's life, excepting only his grandmother, falls victim to circumstances: his mother to self-loathing, his father to a quirk of fate, his possible-father to German bullets. Oskar's world dies; Oskar lives.

Oskar (David Bennent) gets his drum on his third birthday, 1927, deciding on that day to halt his growth. His parents (Mario Adort and Angela Winkler) and his mother's lover (Daniel Olbrychski) can only faintly comprehend what this tiny snot is about; Oskar, for his part, knows only too well what the mature world is about, and he will have nothing of it. As Schlöndorff tells the first two-thirds of Grass's story in his remarkably graphic, garishly colored, often fantastic film, Oskar serves as the bug-eyed reproach to a world seemingly gone mad, an insightful if not necessarily wise ob-

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server, a passionate critic, a little bastard (perhaps literally, certainly figuratively), a herald, with his squeal, his shriek, of the agony of the Europe coming, then come, then gone. He is simultaneously the symbol of perverse resistance and of petulance, of the childishness of those who seek Big Daddy, in the German case through the twisted machismo of Nazism. Only at the end of the film, at war's end, does Oskar decide to begin once more to grow. Consult Grass's book for the rest of the story, and the movie for the dozens of brilliantly distressing images Schlöndorff packs into his cogently expressive work of just over two hours in length.

David Bennent is now thirteen, a year after the movie was made. His is a rare case of physical tininess which is neither dwarfism nor midgetry. His eyes are prominent but otherwise he is merely miniature, or perhaps "merely" is the wrong word, since he is frightening to behold, a perfectly formed little person likely, like Oskar, to remain little for a very long time, perhaps throughout his life. But Schlöndorff (and Grass) don't rely only on Oskar to make some unsettling points about size; they also use a band of midget entertainers led by the wizened, sage Bebra (Fritz Hakl)—court jesters to the Nazis right down to wee Nazi uniforms—to which Oskar attaches himself for a time, just as healthier (full-sized) lads might attach themselves to the navy to see the world. With these gentle, opportunistic, flexible folk he finds his first love, the diminutive Roswitha Raguna (Mariella Oliveri). She dies too, inadvertent target of a bullet which finds her as she pauses to have one last cup of coffee before fleeing the enemy. As Vonnegut says: and so it goes. And so it goes throughout *The Tin Drum,* the grotesques in stature wending their way through the grotesque world that bigger, presumably more mature, people make.

What does this story tell us? Nothing profound, surely; nothing, that is, that we have not by now absorbed or, if we are exceptionally obtuse, will never absorb. We get our requisite dose of antisemitism and, in Charles Aznavour as a kindly toy merchant, its representative Jewish victim. We get our sexual excess, our wretched dose of mindless conformity, our banality raised to the stature of state religion. For what, if not mediocrity writ large, is all such tyranny of the Nazi or communist stripe? We have read Hannah Arendt on Eichmann, we know how humdrum is the wellspring of most evil, how trite the values of tyrannists, how quintessentially banal the thoughts of those who lead as of those who follow such leaders. Would it be bothersome to suggest that we can see a nasty little version of that sort of horror in the current rantings of such groups as now coalesce here in this, the land of the free and the home of the brave, to puff up their chests and shriek to the world that they, only they, are the Moral Majority?

But of course *The Tin Drum* is a 1959 novel by a German, dealing with another place and another time; of course it couldn't happen here.

What does happen here—in films, at least, and routinely—is a less scary if no less amazing depiction of the young, of whom we must increasingly take note in commenting on the cinema, as the audience for movies narrows to a demographic capsule. The young go to the movies; the young must, perforce, be the prime focus of movies.

Children these days are rushed in real life right into young adulthood, sent out to conquer the world at formal proms for ten-year-olds, made up (the girls) like strumpets at fifteen, induced to dress, at seventeen, as if they were thirty, sent out (the boys) to beat up somebody, play ball, and get laid. Maybe America as a whole feels uneasy in the presence of non-adults, just as, now and again, American adults feel uneasy, even terrified,

Kandice Stroh, Marilyn Kagan, Cherie Currie and Jodie Foster in Foxes, *a "surprisingly perceptive look at the messy business of growing up."*

UNITED ARTISTS

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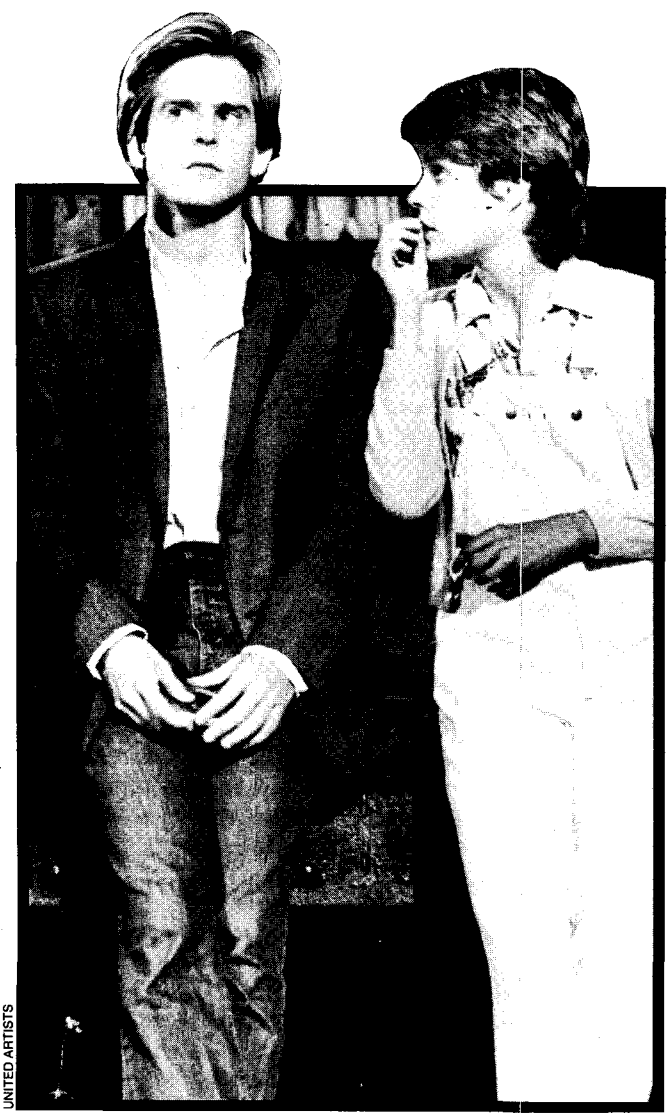
contemplating the prospect of wholly abandoning some mythic state of grace assumed to fall at or near late teen-age. Why else would we want our boys and girls so quickly grown to insipid adulthood, and our adults so eternally, revoltingly, juvenile?

Little Darlings

Little Darlings plunks two girls (Tatum O'Neal and Kristy McNichol) down at summer camp, feuding lasses with their claws out, the one (O'Neal) privileged and overdressed, the other (McNichol) lower-middle class, but both virgins. Gotta do something about that right away, a painted vixen decides, and presto pronto we find ourselves in the midst of a contest to see which girl can lose her virginity first. Out of the mouths of *these* babes comes, mainly, sailor's lingo; and then, after one has become A Woman and regretted it, and the other has not and is not quite sure whether to feel sorry or glad, we get the point of the whole tiresome thing. *Little Darlings* is a fairly slight item, reducing at last to two neat clichés: darling as sadder but wiser, and darling as still pure. The film hasn't even the courage of its trendy convictions: it sets out to shock us with barracks language, to excite us with possibility, and to make a statement of some kind about the travails of the young innocent in a world of seductive sophisticates. Oddly, the only person presented as seductive, and this only to people who are drawn hopelessly to callow boys who don't shave, is the callow boy who finally makes of one of the darlings A Woman.



UNITED ARTISTS

David Grant and Sarah Holcomb in Happy Birthday, Gemini, *"a sermonette on the new traumata of the young: Am I gay?"*

Foxes

Sex is so silly, you see. Or at least that's how you see it through the eyes of filmmakers who get not much deeper into the process than our *Little Darlings*. Even in *Foxes*, a much finer movie also about female teenagers, and a surprisingly perceptive look at the messy business of growing up, the sexual is the aspect least smoothly handled. The four foxes are willing and able, but *my* what a bother it is to get down to it. Deirdre (Kandice Stroh) can't keep her studs separate; Madge (Marilyn Kagan) pops out of her pudgy shell just long enough to hook an older man (Randy Quaid) and sets out instantly to act like an infant in his apartment while he's away; Annie (Cherie Currie) is the lust object for a younger boy (Scott Baio) and the butt of her father's boot, but nobody loves her and she goes very, very wrong; while Jeanie (Jodie Foster) binds the clique together with her sensibleness, putting off commitments and sex and nonsense like that until later, leaving her mother (Sally Kellerman) to perform the role of rabbit in that family's hutch.

Foxes presents young women who chatter incessantly, who chew gum and bounce and squeal and glop on make-up and (we are led to believe though we see little proof of it) go to school and make eyes at boys and cock-tease and occasionally go all the way but always wonder if that's all there is and. . . . Its center of power is Jodie Foster, the only one of the four girls who is well known to most moviegoers, arguably the finest of the current young crop of actresses, undeniably less gorgeous than Mariel Hemingway (*Manhattan*), but believable as a young person with something upstairs besides hair curlers. *Foxes* attempts a great deal, cross-cutting among four stories and interweaving them at critical moments and succeeding in laying out without much nonsense a fairly strong string of happenings, resolutions, irresolutions, and tragedies. But sex, for all that it is continually talked of, seems to be something more easily discussed than depicted, clearly more intelligently used as background noise than as focal point. *Foxes* has many merits, but at bottom it's a come-on. These children lead us to the bedroom door and then snap their fingers. That's all, folks.

The Watcher in the Woods

And isn't it fun to watch the Walt Disney factory gussy up the Model T and move at five miles per hour down the green bucks road to non-G-ratedness. Last year we endured *The Black Hole*—the pits, as every other wag instantly tagged it; now we have *The Watcher in the Woods*, set in Britain, with poor dear Bette Davis starring as a sad old wreck whose only child, a daughter, disappeared oh so many years ago. She has let her house to an American family (Carroll Baker and David McCallum as Mom and Dad, Lynn-Holly Johnson and Kyle Richards as the children); the adjacent woods, however, belong to somebody or something else, depicted now and again as a neonish blue light that zaps our friends.

Watcher is good fun until the end, until we learn the

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Bette Davis and Kyle Richards in the Walt Disney suspense thriller, The Watcher in the Woods, *which "plays up the family and airbrushes sexuality out of existence."*

secret of the mystery of visions and haunting sounds and yelps in the night and all that hokum. For our purposes let us consider it as another example of the failure of a major American movie to get a grasp on the youngster. The girls are so nice you'd want to have them bronzed and displayed on your end table, the little one (Kyle Richards) a cuddly honey, her older sister (Lynn-Holly Johnson) a persistent, spunky kid who with the intense concentration of a Nancy Drew must, naturally, get to the bottom of things. She does, by the way, and she also holds hands with a lithe blond village boy (Benedict Taylor), whom the Disney folks permit one kiss. Good Lord, Disney children smooching! *Watcher,* like the bulk of Disney live action films, plays to its family audience by playing up family, plays down the sexual by airbrushing it out of existence, leaving only one not quite satisfactory recourse to those moviegoers who cannot abide pap: waiting for Bette Davis to open her mouth and say something outrageous (wait forever, friends), or roll her eyes and bring to mind the better days (thank you, Miss Davis).

Happy Birthday, Gemini

And then, and finally, we have one of the recently fashionable traumata of the young: Am I Gay? Francis Geminiani (Alan Rosenberg) is a scholarship student at Harvard, home in South Philadelphia for the summer with his dad (Robert Viharo), who is all muscles and macho Italo-American heartiness and who has a thing going with Lucille Pompi (Rita Moreno), and crazy Bunny Weinberger (Madeline Kahn) and her asthmatic, weird son Herschel (Timothy Jenkins) living next door. Francis's Harvard girl friend, Judith Hastings (Sarah Holcomb), and her younger brother, Randy (David Marshall Grant), also Francis's friend, pop in suddenly with their sleeping bags and backpacks and perfect WASP manners, and *Happy Birthday, Gemini* is off. Derived closely (too closely) from a gross Broadway play, this movie gives the big guys (especially Kahn and Moreno) scads of noisy speeches to make and scenes to steal and leaves to the youngsters the terribly crucial problem of working out Francis's "problem." Seems that although Francis can go to bed with Judith he has developed a crush on Randy, with predictable consequences. Judith has taken psychology and knows a "homosexual panic" when she sees one; Randy, who is splendidly assembled but thinks he's skinny, just wants to be friends.

Oh the layers of compassion and folk wisdom this crew piles on top of tortured young Francis. Dad and his lady friend and Bunny, even Bunny, have long suspected that Francis was, uh, like that, ya know, *queer,* but, golly, it's better than being hunchbacked or dead, I mean if you're the kid's father, right? Right. So says the poise lady herself, Lucille Pompi. As for the kids, Francis thinks he can survive with his opera records and himself, Judith thinks that if Francis can get it up for her he can get it up for her always, and Randy just thinks that if he smiles his Pepsodent smile everything will be all right and they can spend the summer, the three of them, flopping 'cross country in their crocodile shirts.

David Marshall Grant, who has a major role in *Bent,* the Broadway play about the Nazi extermination of the homosexuals (Richard Gere is the star at present; Michael York will have the role by the time you read this), came up in these pages before, favorably, as one of the young stars of *French Postcards.* He has the looks, a somewhat unfortunately Henry Aldrichesque voice, and lots of energy, out of which he is nicely fashioning a career as a male ingenue. Pity that *Happy Birthday, Gemini* allows him room only to leap about and glow.

But the movie itself provides a timid footnote to this subject. Now they've not only defanged The Subject — the three, as you might guess early on, *do* ride off for the summer together, Francis's sexuality neatly tucked away with his extra shorts and socks — they've reduced it to an occasion for condescendingly understanding sermonettes.

Oskar and his tin drum beat out a dirge for the unthinking world. Francis and Judith and Randy just spin another Callas record and hope the world will go away. Ugly little monster, that Oskar, but he's got rhythm; while most of the kids in recent American films merely wag their tails, back and forth, back and forth, marking time. ❑

LR's film critic writes about movies for *The Boston Herald American* and reviews films and plays on WHDH Radio and WNAC-TV (CBS) in Boston. He is the host of talk programs on both stations, writes a thrice-weekly newspaper column, and reviews books for a number of journals. He is also Deputy Sheriff of Middlesex County (Massachusetts).

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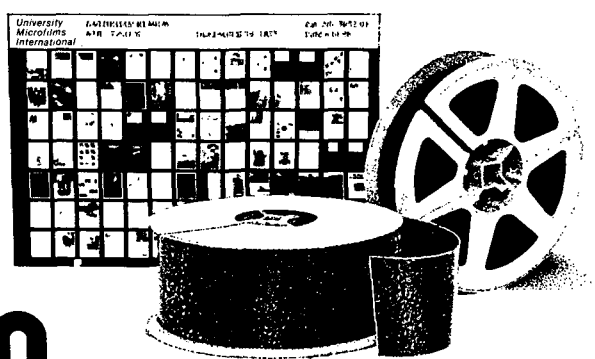

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